

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

**STATUS CONFERENCE
VIA REMOTE ZOOM
VIDEOCONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
April 14, 2021
Commencing at 4:00 p.m.

B E F O R E:

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1 (PROCEEDINGS held remotely via Zoom videoconference before
2 Special Master The Honorable Thomas I. Vanaskie at 4:00 p.m.)

3 JUDGE VANASKIE: I see it's 4:00. I see Camille is
4 here, our court reporter is here. Are we ready to proceed?

5 MR. GOLDBERG: Yes, Your Honor.

6 MR. HONIK: Yes.

7 JUDGE VANASKIE: And, again, you know, the standard
8 protocol applies. Please mute your mics. The persons who will
9 be speaking then unmute and we'll hear from you and we'll
10 proceed in that manner.

11 We're going to go through the agenda letter in the
12 order that was in Mr. Trischler's letter. So we'll start with
13 the first item, which is the bellwether plaintiff deposition
14 schedule. I take it there's two components to this. One is
15 scheduling the other 18 bellwether plaintiffs -- if I have the
16 numbers wrong, please correct me -- and also scheduling
17 depositions of treating and prescribing physicians.

18 So, who will be addressing this on behalf of the
19 defendants?

20 MS. LAGOS: Good afternoon, Your Honor. My name is
21 Alexandra Lagos and I'll be speaking on behalf of defendants
22 today. Ms. Lockard's in deposition.

23 JUDGE VANASKIE: All right.

24 MS. LAGOS: I don't think we have much dispute on this
25 topic. Mr. Nigh and I were able to have a productive meet and

1 cover this afternoon.

2 We wanted to advise the Court that we're well underway
3 with the first ten bellwether depositions and we are in the
4 process of getting the remaining 18 scheduled. We're working
5 with plaintiffs' counsel to get that completed. Mr. Nigh and
6 Mr. Williamson and I, along with other defense counsel, we met
7 and conferred this morning, and they've provided defendants
8 with a list of plaintiffs' counsel contacts to get those depos
9 scheduled.

10 You mentioned, as well, the treaters and prescribers,
11 and we're going to work towards getting those scheduled as
12 well. We plan to send them a protocol to get that process
13 started.

14 I think we've also reached an agreement with respect
15 to the Defendant Fact Sheets. Would Your Honor like me to
16 address that?

17 JUDGE VANASKIE: Yes, please.

18 MS. LAGOS: Sure. So with respect to the Defendant
19 Fact Sheets, I believe we've reached an agreement that the
20 named defendants will complete the Defendant Fact Sheets at
21 least seven days prior to a bellwether deposition. And I think
22 we're very close to reaching a resolution on the timeline for
23 plaintiffs' responses to the bellwether discovery in cases
24 where the plaintiffs' depos are currently scheduled, with
25 plaintiffs agreeing to respond to the discovery no later than

1 seven days prior to the deposition.

2 I think that addresses the pending bellwether issues
3 for now.

4 Mr. Nigh and I are going to try to work cooperatively
5 and coordinate about the depositions, and we're going to have
6 weekly meet and confers to address the depositions, outstanding
7 discovery, and any DFS issues.

8 JUDGE VANASKIE: Mr. Nigh, did you want to be heard on
9 this?

10 MR. NIGH: No. I think that's a good summary. Thank
11 you, Your Honor.

12 JUDGE VANASKIE: Great.

13 The next item is the non-responsive document
14 challenges. And who will be addressing this on behalf of the
15 defense?

16 I think you're still muted, Mr. Goldberg.

17 MR. GOLDBERG: Sorry about that.

18 Your Honor, this is Seth Goldberg. Sorry if you can
19 hear a siren going off in the background.

20 JUDGE VANASKIE: Understood.

21 MR. GOLDBERG: Okay. I'll just let that finish.

22 But we -- you may recall at the conference last week,
23 during the conference last week, Mr. Honik presented the Court
24 with a possible approach to the plaintiffs being able to
25 challenge documents that have been marked as non-responsive.

1 The Court encouraged us to provide -- defendants to provide a
2 counterproposal, which we have done. I believe that was --
3 that email communication that I sent to plaintiffs on Friday
4 was attached to our letter.

5 JUDGE VANASKIE: It was.

6 MR. GOLDBERG: And what we have suggested to
7 plaintiffs is that rather than have, as Mr. Honik proposed, 50
8 documents be challenged per witness over the course of the next
9 two months of depositions, which we think might end up becoming
10 a significant burden on the parties and the Court, given the
11 number of depositions, if you multiplied that number, which
12 exceeds 30, by 50 documents per witness, you're talking about
13 1500 documents at a minimum that would be subject to a
14 challenge, the briefing issues that would go with that and
15 potential number of documents Your Honor might have to review
16 *in camera*, all during this very busy period of depositions, we
17 felt that that -- that proposal may not be the best
18 alternative. So we have provided a counterproposal, which is
19 that plaintiffs have a total of 50 documents to be presented at
20 one time or that they have the ability to challenge up to ten
21 documents per witness, which would obviously reduce the number
22 of disputes that might potentially be brought to Your Honor's
23 attention.

24 So what we tried to do was tried to really limit the
25 kind of -- the possibility that the parties would be bogged

1 down over the next two months during the period of 30-plus
2 depositions on these issues.

3 And as plaintiffs indicated in their letter, they are
4 willing to meet and to try to work on this, but that's where we
5 are with respect to our counterproposal, and we haven't yet had
6 the chance to have that meet and confer with plaintiffs.

7 JUDGE VANASKIE: All right. Mr. Honik?

8 MR. HONIK: Your Honor, very briefly.

9 What Mr. Goldberg laid out is essentially correct. We
10 did receive their counterproposal on Monday around midday.
11 We've had some minimal ability to caucus internally. As I
12 think Your Honor's aware, virtually all of us are in
13 depositions every day, sometimes multiples of us, and we
14 haven't reached a consensus.

15 Just to remind the Court, the reason this was proposed
16 at all was really as a way to devise a mechanism or process, a
17 streamlined process, to get these issues in front of the Court.
18 And we didn't do it willy-nilly. We did it because there are
19 tens of thousands of documents that we're concerned about. And
20 without prejudging our meet-and-confer efforts yet to occur,
21 what this seems to be evolving into is an effort on the part of
22 the defendants to cap what already exists as our right to
23 challenge those withheld documents.

24 I can tell you that it's a nonstarter to cap at 50
25 documents per each manufacturer. And stop to consider, Your

1 Honor, that there are more than 10,000 Mylan withheld documents
2 alone that we're concerned about. The idea of capping them at
3 50 is simply a nonstarter.

4 There are other elements to their proposal. They do
5 have a proposal per deponent that may be a more favorable route
6 for us to take, and we'll certainly engage Mr. Goldberg and the
7 defense about it.

8 But I just want to remind the Court what this is
9 about, and that is to find a mechanism to get this issue in
10 front of the Court without undue burden to everybody but at the
11 same time preserving to us the right to appropriately challenge
12 what has turned out to be many tens of thousands of withheld
13 documents.

14 So I hope to be able to get back to the Court with
15 some favorable news, and per Mr. Goldberg's suggestion, we will
16 be promptly meeting and conferring on this issue.

17 JUDGE VANASKIE: All right. Mr. Goldberg, anything
18 else on this issue?

19 MR. GOLDBERG: Nothing, Your Honor. We'll raise any
20 issues that we need to based on our meetings with plaintiffs.

21 JUDGE VANASKIE: And just so it's clear, I've
22 withheld -- I've suspended my review of withheld documents
23 pending your efforts to reach agreement.

24 MR. HONIK: Understood, Your Honor. Thank you.

25 MR. GOLDBERG: Thank you.

1 JUDGE VANASKIE: The next issue in the defense letter
2 was the timing of defendants' response to plaintiffs' motion
3 for leave to amend. And who will be addressing this for
4 defendants and where does that stand?

5 MR. GOLDBERG: I believe Kristen or Sarah, will you be
6 talking on this? You're on mute, Sarah.

7 MS. JOHNSTON: My apologies.

8 Good afternoon, Your Honor. Sarah Johnston on behalf
9 of the pharmacy defendants. I think that we can be fairly
10 brief here.

11 Ms. Richer, who I believe is also on this call today,
12 and I had a productive discussion with plaintiffs' counsel,
13 Marlene Goldenberg, yesterday. We discussed the recent motions
14 for leave to amend the master complaint and the timing and
15 briefing schedule for the defense response and what the next
16 steps for that were. Obviously, the defendants were -- just
17 received those motions and the proposed amended pleadings, so I
18 think there's a little bit of work left to be done; but our
19 plan is to circle back with our respective groups, defendants
20 and plaintiffs, and then to touch base again at the end of this
21 week to see where we come out on that.

22 JUDGE VANASKIE: All right. Ms. Goldenberg, anything
23 else on this?

24 MS. GOLDENBERG: Nope. I think Ms. Johnston captured
25 everything.

1 JUDGE VANASKIE: All right. Very well. Thanks.

2 MS. JOHNSTON: Thank you.

3 JUDGE VANASKIE: Thank you very much.

4 The next issue concerns the draft requests for
5 production to the pharmacy defendants. And I think it might
6 also encompass the wholesaler defendants.

7 Who will be addressing this on behalf of the defense?

8 MS. JOHNSTON: Your Honor, Sarah Johnston again for
9 the pharmacy defendants. Also here is Kristen Richer for the
10 pharmacies and it looks like Mr. Geoppinger is here as well.

11 JUDGE VANASKIE: All right. What can you tell us
12 about this issue?

13 MS. JOHNSTON: Well, Your Honor --

14 JUDGE VANASKIE: Go ahead.

15 MS. JOHNSTON: Sorry, I thought I may have been on
16 mute again.

17 You'll recall that at the last discovery conference we
18 discussed this issue and the ongoing negotiations regarding
19 next round requests for production and additional discovery to
20 the pharmacy defendants, and during that conference we
21 discussed the fact that there are certain discovery requests
22 that plaintiffs have proposed that we were comfortable with
23 negotiating at this point and felt could be negotiated at this
24 point and then additional requests that were more appropriately
25 tabled until the pleadings were no longer in flux, and we've

1 outlined those issues and where we come out on those in a
2 couple of different submissions to the Court, including the one
3 filed yesterday which also attached our meet and confer letters
4 on this issue.

5 And I believe that Your Honor's recommendation was the
6 parties go back and meet and confer and see where the line
7 could be drawn between those that could be negotiated at this
8 point and those that would either need to be tabled or where we
9 would need to seek the Court's guidance. And that's what we
10 have done up to this point. And we've had multiple discussions
11 with Mr. Stanoch on the requests and have attempted to carve
12 out where we think discovery -- the requests that discovery
13 could proceed on and those that we feel are frankly not ripe
14 until the pleadings are certain, as many of these requests, as
15 we outline in our letter, pertain to -- pertain to claims that
16 have been dismissed against the pharmacies. And that's where
17 things stand now.

18 I think that we've made progress on the ones that we
19 can make progress. We understand that plaintiffs would like to
20 get this all ironed out at this point but there are certain
21 issues, for example, with respect to requests that go to
22 contracts and agreements and statements of warranty that would
23 reasonably only go to a breach of warranty claim which at this
24 point has been dismissed against the pharmacies.

25 So that's the sort of distinction that we tried to

1 draw during our meet and confers and I think that's where we
2 are right now.

3 JUDGE VANASKIE: All right. And who's going to
4 address this on behalf of the plaintiffs?

5 MS. WHITELEY: I am, Your Honor. Conlee Whiteley on
6 behalf of plaintiffs.

7 I've been working with Mr. Stanoch on these
8 negotiations up until last week and we -- I believe that's a
9 pretty accurate summary of the history and we understand the
10 defendants' position and it's been expressed to us before
11 today, but we've maintained since the very beginning, and the
12 Court has agreed with us, that there should be no stay on
13 discovery pending the motions to dismiss. The retailers and
14 wholesalers are still in the case and we don't believe that
15 that should be a reason not to answer the discover. But we
16 have spoken, we have had some staggering of discovery and we
17 have had it in two phases; but at this point in the case, we
18 think that enough time has passed that we should, you know,
19 either go ahead with this discovery, continue to work on it
20 now, there should be no pause; and to the extent the defendants
21 can present a convincing reason to avoid answering some of that
22 discovery until later, I believe that the issues are close
23 enough for the Court to decide now.

24 We're certainly willing to meet and confer again
25 within the next couple of weeks, but, you know, we'd like to

1 present it to the Court to give us guidance or rulings on the
2 differences between the parties.

3 JUDGE VANASKIE: Ms. Whiteley, how do you propose that
4 this matter get presented where a decision can be made? Are
5 you proposing letter briefs, are you proposing to stand on what
6 you've already submitted? I'm just trying to understand that.

7 MS. WHITELEY: The way we've handled it in the past is
8 we -- you know, I think we should work together, you know,
9 again, especially if you provide any further guidance today,
10 and have one more meet and confer; but then I think that we
11 could provide the Court with redlines of our position versus
12 their position with a short summary attached to that and then
13 we can present it to the Court and answer any questions the
14 Court may have.

15 JUDGE VANASKIE: All right. And what timeframe are
16 you looking to?

17 MS. WHITELEY: We'd like to have it occur at the next
18 CMC.

19 JUDGE VANASKIE: So two weeks from today?

20 MS. WHITELEY: Yes, Your Honor.

21 JUDGE VANASKIE: So when could I get the redlines?

22 MS. RICHER: Your Honor, if I may, I'm a little bit
23 confused because this feels somewhat inconsistent with what was
24 discussed -- sorry. For the record, this is Kristen Richer.

25 I'm a little confused because this seems somewhat

1 inconsistent with what was previously discussed with Mr.
2 Stanoch. As I understood it, plaintiffs were coming --
3 intended to come to the Court today to say they don't think
4 that we should essentially triage which of these requests we
5 negotiate now and which we would negotiate later. They want to
6 negotiate them all now and they wanted the Court's guidance on
7 whether that should proceed that way. And if it's a question
8 of whether that should be briefed for the Court before the next
9 case management conference, which would also give the other
10 pharmacies who are not able to attend this conference a chance
11 to attend and weigh in on that issue, then I think we're fine
12 with that approach.

13 I did not understand Mr. Stanoch, from our last meet
14 and confer, to be saying he'd be asking the Court to rule
15 substantively on these requests that have not been negotiated
16 between the parties in the sense that there is no redlines,
17 those RFPs that we've tabled, because we've been trying to
18 explain to plaintiffs all along we didn't think it made sense
19 to negotiate some of these requests at this time. So I think
20 those are two different things and, one, it would be helpful
21 for us to get some clarity on what plaintiffs are proposing;
22 but, two, we do not feel that any sort of session would be ripe
23 for the Court's ruling on the substance of those --

24 THE COURT REPORTER: Excuse me, Ms. Richer.

25 JUDGE VANASKIE: Excuse me, Ms. Richer, you broke up.

1 So we have to start.

2 Where did you lose it, Camille?

3 (The following is read back:

4 "...we do not feel that any sort of session would be
5 ripe for the Court's ruling on the substance of those --")

6 MS. RICHER: -- on the substance of those RFPs that
7 we'd suggested tabling negotiation on at this point because of
8 the state of the pleadings. If plaintiffs are proposing that
9 we present to the Court our explanation of why certain RFPs
10 should be negotiated now and why others should be tabled, that
11 is something that more closely aligned with what I thought Mr.
12 Stanoch or plaintiffs would be asking for today, and we're
13 prepared to do that in a few weeks for Your Honor. And I do
14 think it's important that other pharmacies who are not on this
15 call be afforded an opportunity to be present for that
16 discussion and to weigh in on those issues. But, obviously,
17 they're not here today because it's an Executive Committee only
18 conference.

19 MS. WHITELEY: Your Honor, what we -- I don't believe
20 there's an actual disconnect here. I think what we
21 contemplated is for the ruling to be on -- that we understand
22 they're going to take the position on certain requests that
23 they do not need to answer them at this time and we want a
24 ruling on that. We don't expect that the defendants agree with
25 us at this time that there should be a redline of all the

1 discovery and a ruling on that. We understand that some of it
2 they don't think they should have to answer at all, and then we
3 would, you know, have their position and our own position as to
4 why they should or should not be answered at this time. And if
5 the Court were to rule they should be answered at this time,
6 then the parties can meet and confer further as to how those
7 should be limited in any further respect and then answer.

8 JUDGE VANASKIE: Ms. Richer, does that help? Does
9 that provide the clarification you were looking for?

10 MS. RICHER: It does, Your Honor. And thank you, Ms.
11 Whiteley. I think we're fine with that proposal, at least as
12 to the pharmacies. And we had discussed that with Mr. Stanoch
13 previously. So if that's the Court's direction, then we'll be
14 prepared to discuss that at the next conference.

15 JUDGE VANASKIE: So are you asking for a determination
16 by me as to whether certain discovery requests must be answered
17 in the near future?

18 MS. RICHER: I think that's -- I think that's right,
19 Your Honor. Although, I would say I think it's more we're
20 seeking guidance from the Court on whether certain draft
21 requests should be negotiated at this point because our
22 position up until now has been that certain of these should be
23 tabled because they relate to things that are very in flux in
24 the pleadings and so any discussion about relevance and
25 proportionality seems like it would be very inefficient at this

1 point. Plaintiffs disagree with that position. And I think
2 what both -- what Ms. Whiteley is seeking and what we're saying
3 makes sense is for us to brief that issue for the Court so the
4 Court can say for these four that the pharmacies have suggested
5 tabling do move forward, I think you should, or do not move
6 forward. We're fine with that.

7 JUDGE VANASKIE: So getting back to the point of
8 triaging the discovery requests. By when can you have that, I
9 guess, submitted to me by way of letter briefs for me -- will
10 we be in a position to have exchanged briefs or present briefs
11 to me so that I can address that at our next conference two
12 weeks from now?

13 MS. WHITELEY: Yes --

14 MS. RICHER: Unless -- go ahead.

15 MS. WHITELEY: We can -- we can be in a position to do
16 that if -- if the defendants can as well.

17 JUDGE VANASKIE: All right.

18 MS. RICHER: Yes. And I don't think that needs to be
19 a complicated briefing schedule. I think we can just both
20 submit our positions on that in advance of the next conference
21 with a letter brief.

22 JUDGE VANASKIE: Yes, just get it to me a few days in
23 advance of the 28th of April and that will be fine. We won't
24 put any hard-and-fast schedule. I expect you will get it to me
25 at least a few days in advance so I can review it. All right?

1 MS. WHITELEY: Yes, Your Honor.

2 MS. RICHER: Will do. Thank you.

3 JUDGE VANASKIE: Is that specific enough?

4 MS. WHITELEY: We'll agree on a date -- we'll submit
5 it on the same day by agreement.

6 JUDGE VANASKIE: Okay. Thank you. Thank you.

7 MS. JOHNSTON: Thank you, Your Honor.

8 MR. GEOPPINGER: Your Honor, if I may be heard. For
9 the record, Jeff Geoppinger.

10 JUDGE VANASKIE: Yes, Mr. Geoppinger.

11 MR. GEOPPINGER: I'm here on behalf of the
12 wholesalers.

13 The wholesalers have sort of -- we've also had
14 discussions about the draft requests with Mr. Stanoch. We had
15 a meet and confer yesterday. We've been proceeding a little
16 bit separate and apart from the pharmacies. There are some
17 differences in terms of what claims that exist and some
18 differences with respect to duplication of discovery that the
19 pharmacies may have that we don't have.

20 So we had a productive meet and confer yesterday and
21 we are planning on talking again. We both have some things to
22 follow up on.

23 So from the wholesalers' standpoint, I think that, you
24 know, we are still in the process of meeting and conferring on
25 that. I presume that before the next conference we'll, you

1 know, submit position statements about where we are in terms of
2 those negotiations; but, you know, I can't really say anything
3 more specifically about what those will look like at that time,
4 whether we'll have a disagreement or not about certain requests
5 and duplication issues and so on and so forth. But we'll be
6 happy, obviously, to submit our positions then. Hopefully, you
7 know, we'll be able to have it all work out.

8 JUDGE VANASKIE: All right. So position statements to
9 be submitted on the wholesaler defendants' discovery in advance
10 of the April 28th conference.

11 MR. GEOPPINGER: Yes. I would assume it would be
12 similar to what we would usually submit as an update as to
13 where we are.

14 JUDGE VANASKIE: That would be fine. Okay. Thank
15 you.

16 Then there's a question with respect to the 30(b)(6)
17 notices for the pharmacy defendants. Where does that stand
18 right now? Ms. Whiteley?

19 MS. WHITELEY: Your Honor -- Sarah, can you tell us
20 your position on that and I'll respond?

21 MS. JOHNSTON: Sure.

22 Your Honor, during our last meet and confer with Mr.
23 Stanoch, we also discussed that 30(b)(6) notice and we posed a
24 couple of clarifying questions regarding certain topics that
25 are in the draft notice and Mr. Stanoch agreed to get back to

1 us in response to those questions. But I think that our last
2 meet and confer was a good one and we're making headway on
3 that.

4 JUDGE VANASKIE: All right. So I'll look forward to
5 your update on where this stands for our April 28th conference.

6 MS. JOHNSTON: Yes, Your Honor.

7 JUDGE VANASKIE: Anything else with respect to
8 pharmacies and wholesaler discovery?

9 MS. JOHNSTON: Not for the pharmacies. Thank you.

10 JUDGE VANASKIE: All right.

11 MR. GEOPPINGER: Nothing for the wholesalers. Thank
12 you, Your Honor.

13 JUDGE VANASKIE: Okay. I take it, Ms. Whiteley,
14 nothing else on your end?

15 MS. WHITELEY: No, Your Honor. Thank you.

16 JUDGE VANASKIE: Good.

17 The next issue I have on the agenda is the Hetero
18 discovery. And are we making any progress in this matter? I
19 have a letter that told me that 7,000 pages of documents have
20 been produced and that there are to be two more document
21 productions made prior to or at least by today. But where does
22 this stand?

23 Is this yours, Ms. Goldenberg?

24 MR. PAREKH: It's mine, Your Honor. This is Behram
25 Parekh.

1 JUDGE VANASKIE: All right.

2 MR. PAREKH: So to give you just a slight bit of more
3 background on this, on December 9th we raised with Judge
4 Schneider the issue whether or not defendants had completed
5 document production and Judge Schneider went through a rollcall
6 of the defendants and they all said that their document
7 productions were complete and, specifically, Mr. Shah
8 represented that Hetero Labs and Hetero -- well, basically the
9 -- Hetero Drugs and Hetero Labs', the India entities, document
10 productions were complete.

11 Since that time we have raised multiple issues where
12 we've found that Hetero's document productions were not
13 complete and just in the last few weeks we've received
14 approximately a hundred thousand pages worth of documents that
15 they have produced in response to our deficiency notices. We
16 have multiple concerns with what is still left outstanding.

17 First is we still have not received a letter in
18 response to what Your Honor ordered, that the Hetero entities
19 identify their applications, databases and equipment systems
20 that have responsive data. All we've gotten is a general reply
21 that says, you know, these particular units have centralized
22 servers on which, you know, data is kept. That's not the type
23 of information that we have received from the other entities as
24 we've noted in our -- in the document.

25 We had a multi-hour meeting with each of the

1 defendants prior to Hetero being involved in the case due to
2 the Hague Convention issues in terms of service and delay, and
3 the type of information that was provided by, for example, ZHP
4 or Mylan, simply has not been provided by Hetero so that we
5 don't really have a comfort level that we're even asking for
6 the right information or asking for all of the information that
7 we think we need.

8 This was -- we brought this up, you know, many weeks
9 ago with Your Honor and Your Honor asked Hetero to do it and
10 they said they would but they still haven't.

11 We also have a serious concern because when we asked
12 Hetero to tell us which of the custodians and witnesses had
13 received discovery -- I mean, lit-hold notices, we realized
14 from their responses there were numerous witnesses, as we've
15 detailed in the letter, I won't repeat the names, who had not
16 received lit-hold notices but who were now being, you know,
17 produced for depositions and were custodians that we had agreed
18 upon to be produced. You know, we're just not confident that
19 what we have is what we need and we're having to go forward now
20 with depositions simply because we're running out of time. You
21 know, we have a May 30th deposition cutoff and we have numerous
22 depositions that we still need to schedule. These are multiday
23 depositions, the witnesses are in India, we're having to
24 schedule them at odd hours due to the time differences, and we
25 have no choice but to go forward with these depositions at this

1 point, but we don't feel confident that we have the documents
2 we need in order to really go forward with those depositions.

3 Just one example that we discovered recently when we
4 were preparing for these depositions is the fact that we don't
5 appear to have final versions of numerous documents when we
6 have draft versions. And, you know, it's sort of like Hetero
7 is saying, well, you know, we've -- we responded to your
8 deficiencies and we've, you know, cured them as you identified
9 them, but it really isn't plaintiffs' job to be identifying
10 deficiencies in the production. They're basically saying, you
11 know, here's the documents we've produced, go fish and find the
12 ones that we haven't. And that's not the way discovery works.
13 And we're very concerned about, you know, going forward with
14 these depositions having no idea whether or not there are
15 significant documents that are still missing.

16 JUDGE VANASKIE: All right. Who's going to address
17 this on behalf of Hetero?

18 MR. ABRAHAM: Good afternoon, Your Honor. This is
19 Eric Abraham.

20 JUDGE VANASKIE: Mr. Abraham, I'm glad you were able
21 to make it.

22 MR. ABRAHAM: Thank you. Thank you for your
23 accommodation, Your Honor, with my 4:00 hearing; I appreciate
24 that.

25 Your Honor, as long as we're going to go back in

1 history a little bit, I'd like to bring to the Court's
2 attention that Hetero Labs was slightly late to this party.
3 Due to Hague service and other issues, we didn't come in at the
4 beginning. And prior to our appearance in the case on behalf
5 of Hetero Labs, as Mr. Parekh has indicated, there was a
6 process that Judge Schneider oversaw whereby the parties
7 conferred with each other and met with each other to review
8 their ESI, in other words, how they stored documents and where
9 they stored documents. And that wound up being the subject of
10 some letter writing between them where the plaintiffs would
11 send to a defendant a specific set of questions about document
12 retention policies and storage. We never got that letter.
13 When we came into the case, we were never approached by
14 plaintiffs to have that kind of a discussion. We have gone and
15 gotten a copy of that letter that they sent to other defendants
16 and we are now working with our client to provide responsive
17 answers to every aspect of it. And I -- I sympathize with Mr.
18 Parekh because I understand his concerns but, respectfully, the
19 time to have had this conversation, if he wanted to have it
20 with me, was when Hetero Labs first came in this case; not
21 after we went through months and months and months, from June
22 through November, of document production.

23 So we are where we are, which is, we think that we
24 made a diligent effort to produce documents, we gave our best
25 efforts. We've been presented with several lists and

1 iterations of documents that they've identified as missing.
2 We've done our level best to collect each and every one of
3 those documents. There were document productions this week, in
4 fact as recently as today, providing thousands of additional
5 pages of documents and we think that we have checked the box on
6 each and every document that he's requested of us.

7 Now, with respect to the letter that Your Honor
8 requested that would detail our storage and retention and
9 records management practices, we're doing that. We have -- we
10 sent to our client an exhaustive list of the questions that
11 we've gotten answered. We got those answers this morning.

12 We, also, when we were able to lay our hands on the
13 document retention letter that plaintiffs sent to the other
14 parties back in November 2019, we also sent that letter to our
15 client to make sure that we are going to cover the waterfront
16 on every issue that plaintiff wants to understand about our
17 document retention policies. That is in process. We're
18 conferring with our client. As recently, as I've said, we've
19 gotten a substantial set of questions answered today, and we
20 hope to get more questions answered about the letter that we
21 sent that plaintiffs had sent to other defendants.

22 With respect to the litigation hold issue, Your Honor,
23 those litigation hold notices obviously were sent out prior to
24 the parties meeting and conferring on who custodians would be
25 and who deposition witnesses would be. So the fact that there

1 may not be a perfect overlap or a line in between them
2 shouldn't be a surprise. What is important, I think, for our
3 purposes, Your Honor, is we have conferred with our client to
4 go through each and every person who had received that
5 litigation hold letter either in writing or orally.

6 Now, Mr. Parekh is correct that the list of recipients
7 of the litigation hold notice in writing does not include every
8 single custodian that he has identified and every single
9 witness, but it is our understanding that every person on that
10 list was given the instruction, the litigation hold
11 instruction, from the head of their department. In other
12 words, the head of their department was a recipient of the
13 litigation hold notice and transmitted that information to all
14 the people that report to them.

15 So I can't go back in history, I can't make that
16 litigation hold notice go to people that plaintiffs had not yet
17 identified as custodians, but I am comfortable, from what I
18 hear from my client, that, in fact, the proper parties were
19 advised of the litigation hold.

20 I believe that that brings me to the end of the three
21 subjects that Mr. Parekh raised.

22 I would ask if Your Honor would permit it, Mr. Shah
23 may have additional detail in case I missed anything. That's
24 why I have him on these calls in part, so that way he can
25 backstop me.

1 Thank you, Judge.

2 JUDGE VANASKIE: All right. Anything else, Mr. Shah?

3 MR. SHAH: Just briefly, Your Honor.

4 I've been working with our client diligently to make
5 document productions nearly every day, I think, in order to
6 address every single issue that Mr. Parekh has raised. Within
7 the last three days we have made a document production every
8 day with a substantial number of documents that address all of
9 the issues that Mr. Parekh has raised, as well as prior
10 iterations and every iteration of those particular documents.
11 So we are confident that we have been able to address all of
12 the issues that Mr. Parekh has raised by way of our document
13 productions.

14 JUDGE VANASKIE: Mr. Parekh?

15 MR. PAREKH: There's two things: One is, is Hetero
16 now willing to say that their document is complete, as they
17 said in December it was complete? And number two, we don't
18 believe, at least looking -- I mean, we haven't been able to
19 look at the documents from today or even yesterday, it takes
20 time to load these documents; but in looking at the production
21 index, it doesn't look like, you know, at least a few of the
22 issues have been covered.

23 One of the issues that it looks like wasn't covered is
24 draft versions of the SOPs where changes were made to the
25 documents. We received -- as we noted in our letter, we

1 received an explanation saying that these were put on a shared
2 drive, these were edited, and then the final version was
3 circulated for edit. As far as we can tell, we've received no
4 communications that evidence any of those edits. We've
5 received no versions of the documents that evidence those
6 edits. And, you know, it's sort of -- it's hard for us to
7 understand how these documents were being edited and changed,
8 and sometimes substantially changed, when there's no evidence
9 of how those changes happened and who talked to whom, who said,
10 hey, we should make this change. I mean, none of those
11 communications exist, as far as we can tell, and none of the
12 redline versions or whatever sort of intermediate steps exist
13 that we can tell.

14 So that issue at least, unless they were produced this
15 morning, which I haven't had a chance to even look at, you
16 know, hasn't been addressed.

17 The other issue, which is one that we just realized
18 yesterday, and we're still trying to work through, is this
19 issue of not having final versions of some of the draft
20 documents. It's sort of the reverse of this issue, where we
21 have a bunch of draft documents and emails containing draft
22 documents but now we can't locate the final sort of official
23 copy of the document. And we're trying to identify those
24 documents where we thought we had a final version but realized
25 that no, it just looks like it's still a draft, to confirm

1 whether or not that version actually is a final version or
2 whether there's supposed to be an official, sort of, file
3 stamped copy that's called the final version that we're
4 missing. But we're still trying to work through that because,
5 I mean, you know, there's a lot of documents and we want to get
6 through them and they keep getting produced. So, you know,
7 we're -- we still continue not to be comfortable that the
8 document production is complete.

9 JUDGE VANASKIE: Well, here's the problem that I have,
10 and that is that I'm not sure what you expect to be done about
11 it in the -- in the current state of things. It seems like
12 every two weeks I have an agenda letter where Hetero discovery
13 is on the agenda and we have a nice discussion of the issue,
14 discovery continues to be made, not in dribs and drabs, in
15 substantial ways, but I'm hearing the same argument, it seems
16 to me, every couple of weeks. And I'm wondering, you know,
17 where do we go with this? Where do we go in terms of getting
18 it to a decision-making point? Is that what you're asking?
19 You know, I've asked and I've gotten the representation from
20 Mr. Abraham that the information that was sought of other
21 defendants, prior to Hetero being in the case, is being
22 gathered by Mr. Abraham and Mr. Shah. I would expect that the
23 information, to the extent it's discoverable, will be produced.
24 I was wondering whether I should be ordering there to
25 be an ESI interview such as I understood occurred with the

1 other defendants or are we too far down the road to have that
2 happen here, to do what Judge Schneider had ordered.

3 So I'll ask you to respond first, Mr. Parekh.

4 MR. PAREKH: Three things that I think can be done
5 concretely.

6 One thing is, I think an ESI interview being ordered
7 would be helpful. Obviously, you know, we appreciate Mr.
8 Abraham's note that he's responding to that letter. Prior to
9 those interviews, we did have responses in writing from
10 defendants, so that would also be helpful to have prior to
11 having an interview; but we will almost inevitably need to have
12 a follow-up interview clarifying questions that we have to any
13 writing that's been done. So I do think that that should be
14 ordered.

15 Number two, we're raising this issue in part because,
16 you know, what we may have to do, depending on the document
17 production, is to extend the time for us to be able to take
18 depositions of Hetero's witnesses past May 30th. We understand
19 that that is certainly not an optimal thing for us to be able
20 to do and it's not something we want to do, but we may have no
21 choice to do it, given the way the document productions are
22 going.

23 And number three, you know, if we find, after today,
24 when Mr. Abraham and Mr. Shah have said that their document
25 production is complete, we believe that any documents produced

1 after today defendants should not be able to rely on in support
2 of any defenses. You know, we should be able to use them, if
3 necessary, and we should be able to use them with their
4 witnesses, if necessary, but they should not be able to rely on
5 them in support of their defenses.

6 JUDGE VANASKIE: All right. Mr. Abraham?

7 MR. ABRAHAM: Thank you, Judge.

8 First of all, we have no objection to an extension of
9 the deadlines to conclude these depositions. We understand
10 that schedules are tight, in any event.

11 Second of all, I don't need to be ordered,
12 respectfully, Mr. Parekh, to have my client respond to the
13 letter that you never sent me. I'm going to have my client
14 respond to that anyway. This is a letter that I have, it's
15 dated November 11, 2019, to Mr. Goldberg. If there is some
16 other form of that letter that you want me to respond to, you
17 tell me. I'll email it to you so you know exactly what we're
18 talking about. But I'm going to have my client answer each and
19 every aspect of that letter.

20 Once that's done, Your Honor, an interview may be
21 appropriate. I think that that's a little bit premature at
22 this point to decide. It may be that after we respond to this
23 letter Mr. Parekh says, I now feel comfortable, I understand
24 everything that needs to be understood.

25 On the last point, Your Honor, with respect to

1 documents and whether or not we're complete and whether or not
2 there should be a sanction of preclusion for allowing us to
3 rely upon them, I think we're way early and way premature for
4 that type of a remedy. There's been no showing whatsoever that
5 there was any type of intentional misconduct or anything like
6 that on the part of Hetero Labs. If anything, we're trying to
7 be as cooperative and as diligent as possible.

8 So what I would suggest, respectfully, to Mr. Parekh
9 and to Your Honor, I understand that we produced a significant
10 number of documents in the past 24 hours. Let Mr. Parekh tell
11 me how long he needs to review them. To the extent that he
12 wants to meet and confer, I am available any day that he
13 selects, any day. I will clear my calendar and we can review
14 whatever open items and deficiencies that he may find and we'll
15 cure them.

16 JUDGE VANASKIE: All right. By when do you think, Mr.
17 Abraham, you'll be able to provide a written response to the
18 questions that were raised in the November 11, '19, letter to
19 Mr. Goldberg?

20 MR. ABRAHAM: This is a wild guess because my client
21 hasn't told me how long he needs to respond. I can tell you
22 that he typically responds to me -- if I send him an email in
23 the afternoon, he typically responds to me by the time I wake
24 up in the morning.

25 JUDGE VANASKIE: Okay.

1 MR. ABRAHAM: This letter is five pages long. It may
2 need information from other sources. It may be that some of
3 the information that he sent to me this morning is responsive
4 to this email, in which case I'm kind of ahead of the game.

5 JUDGE VANASKIE: Okay.

6 MR. ABRAHAM: It's hard for me to say specifically,
7 Your Honor.

8 JUDGE VANASKIE: Would you feel comfortable providing
9 at least a partial response by next Wednesday?

10 MR. ABRAHAM: Yes, sir.

11 JUDGE VANASKIE: All right. So I'll direct that there
12 be a response to that letter, which may be in the file, I
13 haven't -- I don't have any familiarity with the letter itself
14 but I'll ask that it be provided by next Wednesday. That seems
15 reasonable to me.

16 MR. ABRAHAM: Would Your Honor like me to send you a
17 copy of the letter that I'm referring to?

18 JUDGE VANASKIE: Yes, I would like to see that.

19 MR. ABRAHAM: Okay. Mr. Parekh, I'll send it to you
20 first to make sure we're talking about the right letter.

21 MR. PAREKH: That's the right date of the letter. I'm
22 sure it's the correct letter.

23 MR. ABRAHAM: Okay. Then I'll send it to Your Honor
24 as soon as this call ends.

25 JUDGE VANASKIE: All right. Very well.

1 Now, I will say one thing: I teach a course on
2 electronic evidence. I tell my students never say you've
3 produced everything because you don't know that you've produced
4 everything. It simply is -- you know, I've seen too many cases
5 where that representation has been made only to be undercut by
6 something that shows up unexpectedly.

7 What I expect is that you represent that you've made a
8 diligent, good-faith effort to produce all responsive documents
9 and that's what you've done.

10 And so I guess what I'm trying to suggest, Mr. Parekh,
11 I wouldn't be very amenable to a sanctions motion because
12 something came up later, as long as it was shown that due
13 diligence has been exercised to find everything. Now, if they
14 haven't, they didn't search the right spots or they put their
15 head in the sand in terms of learning what the right sources
16 are, you've asked questions about sources, you haven't received
17 answers yet, those are the types of things I'd be concerned
18 about. I don't expect anybody to say, we've given you
19 everything we have that is responsive because, frankly, with
20 ESI, it's not likely that you have everything; 99 percent, 99.9
21 percent, but I'm just -- I'm just letting you know that. But
22 where production has been sluggish, that can result in problems
23 for the producing party if it prejudices you. So I'm sensitive
24 to that as well.

25 So I think you're making progress here. I think it is

1 helpful that we'll have a written response to that ESI letter
2 that was sent back in November of 2019. Productions to be
3 made, you still have to review that production, I understand
4 that. And I'm hoping that in two weeks from now that the
5 report we get is that we've made substantial progress and we're
6 moving forward.

7 Now, if not, then we're going to have to get to a
8 point where this gets presented to me by way of an appropriate
9 motion. I'm not sure what that motion is at the present time.
10 I'm not sure if it's a motion to compel or a motion for other
11 relief, but we're going to have to get to that point.

12 And I'm going to pause for a second while I get my
13 barking dog out of here. Hold on.

14 (Brief recess taken at 4:47 p.m.)

15 JUDGE VANASKIE: Sorry for the interruption.
16 Anything else on this, Mr. Abraham?

17 MR. ABRAHAM: No, sir. I thank Your Honor for the
18 time.

19 JUDGE VANASKIE: All right. Mr. Parekh, anything else
20 on this?

21 MR. PAREKH: Not really, Your Honor. We understand.
22 I've been working with ESI for almost 30 years now and I
23 completely understand where you're coming from.

24 JUDGE VANASKIE: You would know better than I.

25 MR. PAREKH: And we don't expect perfection and that's

1 not what we're looking for. We're just very concerned about
2 the types and how crucial these documents are to the core
3 issues in the case, which is -- which is why we have a concern.
4 But we do understand what Your Honor is saying and we take that
5 to heart.

6 JUDGE VANASKIE: Right.

7 MR. PAREKH: I believe Ms. Goldenberg has a related
8 issue with Aurobindo on the same thing. I think that's next on
9 the agenda.

10 JUDGE VANASKIE: Yes, Aurobindo was the next issue on
11 the agenda.

12 Ms. Goldenberg?

13 MS. GOLDENBERG: Hello, Your Honor. Candidly, this is
14 not an issue that I thought we were going to be dealing with
15 today. This is resulting from an email that I got an hour ago.

16 The email that I got an hour ago was that Aurobindo is
17 intending to make a last-minute document production tonight for
18 a deposition that's supposed to begin tomorrow morning at 8:00
19 a.m. relating to one witness that I just mentioned, Blessy
20 Johns, and then another witness whose deposition is starting on
21 Friday named Jasleen Gupta.

22 This document production apparently is going to be
23 20,000 documents. And these 20,000 documents are larger than
24 the entire production that we had received from Aurobindo as of
25 November 2020 when Aurobindo told the Court that their

1 production was substantially complete.

2 Now, I've heard what you had to say about not
3 expecting perfection and I don't think that's what we're asking
4 for, but when we hear that we're getting more documents in one
5 day than a defendant produced in an entire year, understandably
6 we become concerned.

7 And what we're asking for, Your Honor, is we are here
8 to ask for sanctions because I feel like I sound like a broken
9 record at this point coming before the Court every single week
10 telling you about the production problems that we've had with
11 Aurobindo, but, unfortunately, these problems haven't corrected
12 themselves.

13 And, you know, what I wanted to emphasize also is that
14 these two witnesses are U.S. witnesses. They were confirmed as
15 custodians by the Court in ECF 328 at Page 27 on December 23rd,
16 2019, which is more than a year ago. So Aurobindo's known for
17 about a year and a half now that these individuals are two
18 people that have relevant documents and that their custodial
19 files should have been searched.

20 In spite of this, Aurobindo never sent a litigation
21 hold to one of these custodians even after the custodian was
22 designated by the Court; but this is not an issue that's
23 arising because of any of the Indian custodians who are later
24 confirmed on the record by the Court that we've been discussing
25 this year.

1 In the months leading up to the end of 2020, as you
2 know, the Court had set a deadline for the completion of
3 discovery and in December, a month afterwards, we had a
4 conversation with Aurobindo and asked them why their document
5 production was so small. They, at that point, had produced
6 about 13,000 documents, which was substantially smaller than
7 what any other defendant in this case had produced. And in the
8 December case management conference, Ms. Heinz stated on the
9 record, "We have completed our review of the 15 custodians that
10 we had for Aurobindo and it's my understanding that it is
11 substantially complete and we haven't been made aware of any
12 issues from the plaintiffs. That's not to say that none will
13 be raised, but we're happy to work through anything that may
14 come up. I don't anticipate anything but at this time we have
15 finished our review and produced everything we have."

16 That is far from true, as we found out this afternoon,
17 because we had previously about 1200 or 1900 documents for
18 Blessy Johns. So to get 20,000 is exactly the type of scenario
19 that you had just talked about and it's not one that should
20 have been a surprise to Aurobindo for a custodian who's been
21 approved by the Court since the end of 2019.

22 We, again, have repeatedly questioned Aurobindo why is
23 the production so small, what's happening, and we were told,
24 you have to go and find the issue and if you find an issue,
25 then we'll work through something. And as Mr. Parekh pointed

1 out earlier, we're trying to find the issues but I don't think
2 that's our job. But here's what we have found.

3 We've taken two depositions so far and we found out
4 that Aurobindo did not look in the right places. They only
5 searched email and the metadata for every single document that
6 had been produced for both Bhadresh Doshi and Prasad Gorijavolu
7 had file pads that show that every single document was either
8 an Outlook email or a document that was attached to an Outlook
9 email. They didn't search the computer, they didn't search a
10 computer shared drive, and none of those documents had been
11 disclosed to us until we specifically raised this in a
12 deposition and only now are we starting to get some.

13 We also know that before both of those depositions we
14 got late-night productions from Aurobindo. In both instances,
15 it was a rush to get our document vendor to load those
16 documents. And in that case it was a few hundred. It was
17 about 500 in one, a little more than 100 documents in another,
18 and that was, you know, inappropriate but not anything on the
19 scale of what we're dealing with here.

20 And, by the way, the way that this came up today was
21 we got an email saying, hey, plaintiffs, by the way, we are
22 sending you some additional documents tonight at 10:00 p.m. for
23 these two custodians. No document count was disclosed in that
24 email, and I had to write back and ask them for it. And it was
25 only then that they told us exactly what we were dealing with.

1 This is not something that they could not have
2 anticipated. They knew these depositions were set, they knew
3 that we needed these documents, and even if they were in the
4 process of producing them, it would have been a nice
5 professional courtesy to get a call from one of them to say,
6 hey, we're working on this, we'll get these to you, do you want
7 to reschedule the deposition or can we work with you on this to
8 make sure that this gets done properly. Instead,
9 unfortunately, we got them an hour before the case management
10 conference.

11 And, Your Honor, respectfully, we've been through this
12 with Aurobindo. This is now a pattern, it's happened four out
13 of four times with depositions and there needs to be more of a
14 deterrent for them than just let's continue to work together.
15 And because of that, we're asking you to strike their defenses
16 in this case. We can't let this behavior continue. And we
17 need there to be some end to this process or this case is just
18 never going to get done, and at this point it's highly
19 prejudicial to our ability to prosecute our claims.

20 JUDGE VANASKIE: Thank you.

21 Is Ms. Heinz on? I think you're muted.

22 I think you are still muted.

23 MR. KOSCHINEG: There we are. Thanks.

24 Good afternoon, Your Honor. This is Ernie Koschineg
25 on behalf of Aurobindo.

1 I was actually speaking with Ms. Goldenberg via email
2 last night about these upcoming depositions, specifically
3 Blessy Johns.

4 First and foremost, I think this idea of striking
5 defenses and sanctions is way too premature. We just learned,
6 after the plaintiffs had made additional requests, we went
7 back, exercised additional due diligence in this entire
8 document process, which has been absolutely fluid every time
9 we've met and conferred with them. We've done additional
10 searches and we are now producing more documents. We found out
11 late on the weekend that there were going to be additional
12 documents being produced with regard to -- or potentially to
13 Blessy Johns and Ms. Gupta who is to be deposed on Friday. We
14 did our best to get through those records. We had them
15 digested by our eDiscovery vendor. That was not completed
16 until Monday, the entire digest process. Then once we learned
17 who they were going to pertain to, and we learned of that this
18 afternoon, we, obviously, emailed Ms. Goldenberg, as she
19 pointed out.

20 At this point, we're doing our best to get through
21 this. Every time there is an issue with discovery, we try to
22 address it. We are doing our best to go ahead and meet
23 whatever requests that they have. And at this point, to
24 sanction us without a motion is completely premature. We are
25 totally willing to produce Ms. Johns whenever the plaintiffs

1 want. We're willing to make it in accordance to their
2 calendars, we will make ourselves available, but, you know, to
3 say that we are somehow being malicious or we are -- it's our
4 intent to withhold documents, it's just simply not true. I
5 mean, we're trying to comply with their requests and that's
6 exactly what we've done.

7 MS. GOLDENBERG: Your Honor, if I could just briefly
8 respond to that. And you're on mute this time.

9 JUDGE VANASKIE: Yes, I am on mute. There we go.
10 Ms. Goldenberg?

11 MS. GOLDENBERG: Yes. Your Honor, I'll also just
12 point out that the defendants have worked out a process that
13 allow plaintiffs' cases to be dismissed entirely with prejudice
14 for failure to complete a Plaintiff Fact Sheet in a
15 satisfactory manner. And so, you know, we're at the point
16 where this really has to go both ways.

17 Plaintiffs are held to a strict standard where they
18 have cases that have been subject to orders to show cause for
19 everything from failure to file a Plaintiff Fact Sheet to
20 failure to provide signed authorizations and executed
21 declarations, failure to properly respond to specific questions
22 in the Plaintiff Fact Sheet, failure to attach records, and
23 these are only things that were cited in the September 29,
24 2020, letter from the defendants. There were even things that
25 asked for orders to show cause for failure to provide proper

1 NDC codes. So these are much smaller things than what the
2 plaintiffs are dealing with on the other side, and there are
3 severe consequences for them. Those plaintiffs lose their
4 cases.

5 We've been dealing with this issue with Aurobindo for
6 months now. These documents were due in November. There was a
7 statement to the Court and to the plaintiffs on the record that
8 this production was complete, and now we are where we are
9 today, and, again, this really just needs to be a two-way
10 street.

11 JUDGE VANASKIE: Well, this is a very serious matter.
12 And getting documents produced on the eve of the deposition,
13 especially the volume that you're talking about, is, quite
14 frankly, not understandable. And it may be -- it may be a
15 pattern that has developed in this matter.

16 I cannot grant your motion for sanctions on a motion
17 presented to me today. But it is a serious matter and would
18 warrant serious attention. I certainly don't preclude you from
19 filing such a motion based upon the record that you can
20 present. And it may be that there needs to be a hearing on
21 such a motion. All I'm saying at the present time is that I
22 think you should take appropriate action that you consider. I
23 know this just happened so you couldn't have presented the
24 motion to me sooner; but for me to strike defenses, I'd have to
25 give the other side an opportunity to be heard more so than

1 responding orally here during the course of our regularly
2 scheduled CMC.

3 So I will give you that opportunity to move for
4 sanctions. If you think that's the appropriate sanction, that
5 is preclusion of defenses, then you can present that to me by
6 way of an appropriate motion adequately supported with an
7 opportunity to respond. You can seek other relief as well
8 because I know you may be prejudiced in terms of taking the
9 depositions tomorrow and Friday. I'm sensitive to that as
10 well. But I can't grant the relief you request. And you have,
11 you've developed the record, presented a record, over a period
12 of time where you all were repeatedly meeting and conferring,
13 and the letters do exist, and that's why I say this is, indeed,
14 a very serious matter and I am concerned about it. But I
15 simply don't think it would be appropriate for me to grant the
16 relief you request based upon an oral motion made during the
17 course of this case management conference.

18 Is there anything else?

19 MS. GOLDENBERG: Not from me, Your Honor. I
20 appreciate that guidance and we'll bring the motion in the
21 forum that you suggested.

22 JUDGE VANASKIE: All right. Anything else on behalf
23 of Aurobindo?

24 MR. KOSCHINEG: Nothing, Your Honor.

25 JUDGE VANASKIE: All right. Is there anything else

1 that you'd like to present to me today?

2 (No response).

3 JUDGE VANASKIE: Mr. Slater --

4 MR. GOLDBERG: Nothing from defendants, Your Honor.

5 JUDGE VANASKIE: -- you told me not to ask that
6 question and I am surprised, I didn't receive any answer so I
7 guess it's okay.

8 MR. SLATER: I told you not to ask because you never
9 know what you get. I'm happily not going to say anything
10 today. My colleagues have done a wonderful job for the
11 plaintiffs. I think that you've done a lot of hard work
12 lately. We're hoping that we can bring this to a close for the
13 day.

14 JUDGE VANASKIE: Good. Well, we will bring it to a
15 close for the day. I won't ask any other questions.

16 We are adjourned. Thank you very much.

17 MR. GOLDBERG: Thank you, Your Honor.

18 MR. SLATER: Thank you, Your Honor.

19 (The proceedings concluded at 5:02 p.m.)

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.

3
4 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
5 Court Reporter/Transcriber

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|----------|--|--|--|--|---|--|---|
| | 36:22 30(b)(6) [2] - 20:16, 20:23 30-plus [1] - 8:1 300 [1] - 3:10 30305 [1] - 2:17 30th [2] - 23:21, 31:18 316 [1] - 1:21 32502 [1] - 1:21 328 [1] - 38:15 3333 [1] - 2:16 | 32:4, 33:17 above-entitled [1] - 47:2 Abraham [8] - 24:19, 24:20, 30:20, 30:22, 31:24, 32:6, 33:17, 36:16 ABRAHAM [12] - 3:2, 24:18, 24:22, 32:7, 33:20, 34:1, 34:6, 34:10, 34:16, 34:19, 34:23, 36:17 Abraham's [1] - 31:8 absolutely [1] - 42:8 accommodation [1] - 24:23 accordance [1] - 43:1 accurate [1] - 13:9 Actavis [2] - 2:18, 2:18 ACTION [1] - 1:4 action [1] - 44:22 actual [1] - 16:20 ADAM [1] - 1:14 additional [9] - 11:19, 11:24, 26:4, 27:23, 40:22, 42:6, 42:7, 42:9, 42:11 address [9] - 5:16, 6:6, 13:4, 18:11, 24:16, 28:6, 28:8, 28:11, 42:22 addressed [1] - 29:16 addresses [1] - 6:2 addressing [4] - 4:18, 6:14, 10:3, 11:7 adequately [1] - 45:6 adjourned [1] - 46:16 advance [4] - 18:20, 18:23, 18:25, 20:9 advise [1] - 5:2 advised [1] - 27:19 afforded [1] - 16:15 afternoon [8] - 4:20, 5:1, 10:8, 24:18, 33:23, 39:16, 41:24, 42:18 afterwards [1] - 39:3 agenda [6] - 4:11, 21:17, 30:12, 30:13, 37:9, 37:11 ago [4] - 23:9, 37:15, 37:16, 38:16 agree [2] - 16:24, 19:4 agreed [3] - 13:12, 20:25, 23:17 agreeing [1] - 5:25 agreement [4] - 5:14, 5:19, 9:23, 19:5 agreements [1] - | 12:22 ahead [5] - 11:14, 13:19, 18:14, 34:4, 42:22 Aid [1] - 3:11 aided [1] - 1:25 ALEXANDRA [1] - 2:16 Alexandra [1] - 4:21 aligned [1] - 16:11 allow [1] - 43:13 allowing [1] - 33:2 almost [2] - 31:11, 36:22 alone [1] - 9:2 ALSO [1] - 3:13 alternative [1] - 7:18 amenable [1] - 35:11 amend [2] - 10:3, 10:14 amended [1] - 10:17 AmerisourceBergen [1] - 3:7 Angeles [1] - 3:10 answer [7] - 13:15, 14:13, 16:23, 17:2, 17:7, 32:18, 46:6 answered [6] - 17:4, 17:5, 17:16, 26:11, 26:19, 26:20 answering [1] - 13:21 answers [3] - 25:17, 26:11, 35:17 anticipate [1] - 39:14 anticipated [1] - 41:2 anyway [1] - 32:14 apart [1] - 19:16 apologies [1] - 10:7 appear [1] - 24:5 appearance [1] - 25:4 applications [1] - 22:19 applies [1] - 4:8 appreciate [3] - 24:23, 31:7, 45:20 approach [2] - 6:24, 15:12 approached [1] - 25:13 appropriate [6] - 32:21, 36:8, 44:22, 45:4, 45:6, 45:15 appropriately [2] - 9:11, 11:24 approved [1] - 39:21 April [4] - 1:10, 18:23, 20:10, 21:5 argument [1] - 30:15 arising [1] - 38:23 aspect [2] - 25:17, | 32:19 assume [1] - 20:11 Atlanta [1] - 2:17 attach [1] - 43:22 attached [4] - 7:4, 12:3, 14:12, 40:8 attempted [1] - 12:11 attend [2] - 15:10, 15:11 attention [3] - 7:23, 25:2, 44:18 Attorney [1] - 3:4 Aurobindo [18] - 2:22, 37:8, 37:10, 37:16, 37:24, 37:25, 38:11, 38:20, 39:4, 39:10, 39:20, 39:22, 40:4, 40:14, 41:12, 41:25, 44:5, 45:23 Aurobindo's [1] - 38:16 Aurolife [1] - 2:22 authorizations [1] - 43:20 available [2] - 33:12, 43:2 Avenue [1] - 2:6 avoid [1] - 13:21 aware [2] - 8:12, 39:11 | | | |
| 1 | 450 [1] - 2:21 45202 [1] - 3:7 4:00 [4] - 1:10, 4:2, 4:3, 24:23 4:47 [1] - 36:14 4th [1] - 1:9 | 5 50 [5] - 7:7, 7:12, 7:19, 8:24, 9:3 500 [1] - 40:17 55402 [1] - 2:6 5:02 [1] - 46:19 | 6 600 [2] - 1:21, 3:6 609-774-1494 [1] - 1:24 | 7 7,000 [1] - 21:19 701 [1] - 2:9 70130 [1] - 2:9 | 8 800 [1] - 2:6 8:00 [1] - 37:18 | 9 90067 [1] - 3:10 90277 [1] - 2:3 99 [1] - 35:20 99.9 [1] - 35:20 9th [1] - 22:3 | A a.m [1] - 37:19 ability [3] - 7:20, 8:11, 41:19 able [16] - 4:25, 6:24, 9:14, 15:10, 20:7, 24:20, 26:12, 28:11, 28:18, 31:17, 31:19, 32:1, 32:2, 32:3, |
| 2 | 10,000 [1] - 9:1 100 [1] - 40:17 103 [1] - 1:15 10:00 [1] - 40:22 11 [2] - 32:15, 33:18 1200 [1] - 39:17 13,000 [1] - 39:6 14 [1] - 1:10 15 [1] - 39:9 1500 [1] - 7:13 1638 [1] - 2:3 17th [1] - 2:12 18 [2] - 4:15, 5:4 1835 [1] - 1:18 19-md-02875-RBK-KMW [1] - 1:5 1900 [1] - 39:17 19103 [2] - 1:18, 2:13 19422 [1] - 2:21 | 10 10,000 [3] - 37:23, 39:18 2019 [5] - 26:14, 32:15, 36:2, 38:16, 39:21 2020 [3] - 37:25, 39:1, 43:24 2021 [1] - 1:10 2029 [1] - 3:10 21 [1] - 3:3 2150 [1] - 2:6 23rd [1] - 38:15 24 [1] - 33:10 2500 [1] - 2:16 27 [1] - 38:15 2800 [1] - 3:6 28th [3] - 18:23, 20:10, 21:5 29 [1] - 43:23 2900 [1] - 1:18 | 11 11,000 [1] - 39:17 11:00 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 11:11 [1] - 40:22 | | | | |

| | | | | |
|---|---|--|--|--|
| <p>best [6] - 7:17, 25:24, 26:2, 42:14, 42:20, 42:22</p> <p>better [1] - 36:24</p> <p>between [5] - 12:7, 14:2, 15:16, 25:10, 27:1</p> <p>Bhadesh [1] - 40:6</p> <p>bit [6] - 10:18, 14:22, 19:16, 22:2, 25:1, 32:21</p> <p>Blessy [4] - 37:19, 39:18, 42:3, 42:13</p> <p>Blue [1] - 2:21</p> <p>bogged [1] - 7:25</p> <p>box [1] - 26:5</p> <p>breach [1] - 12:23</p> <p>brief [3] - 10:10, 18:3, 18:21</p> <p>Brief [1] - 36:14</p> <p>briefed [1] - 15:8</p> <p>briefing [3] - 7:14, 10:15, 18:19</p> <p>briefly [3] - 8:8, 28:3, 43:7</p> <p>briefs [4] - 14:5, 18:9, 18:10</p> <p>bring [4] - 25:1, 45:20, 46:12, 46:14</p> <p>brings [1] - 27:20</p> <p>broke [1] - 15:25</p> <p>broken [1] - 38:8</p> <p>brought [2] - 7:22, 23:8</p> <p>Building [1] - 1:8</p> <p>bunch [1] - 29:21</p> <p>burden [2] - 7:10, 9:10</p> <p>busy [1] - 7:16</p> <p>BY [1] - 1:14, 1:17, 1:20, 2:2, 2:5, 2:8, 2:11, 2:16, 2:20, 3:6, 3:9</p> | <p>carve [1] - 12:11</p> <p>case [18] - 13:14, 13:17, 15:9, 23:1, 25:4, 25:13, 25:20, 27:23, 30:21, 34:4, 37:3, 39:7, 39:8, 40:16, 41:9, 41:16, 41:17, 45:17</p> <p>cases [5] - 5:23, 35:4, 43:13, 43:18, 44:4</p> <p>caucus [1] - 8:11</p> <p>CCR [1] - 47:4</p> <p>centralized [1] - 22:21</p> <p>Century [1] - 3:10</p> <p>certain [10] - 11:21, 12:14, 12:20, 16:9, 16:22, 17:16, 17:20, 17:22, 20:4, 20:24</p> <p>certainly [4] - 9:6, 13:24, 31:19, 44:18</p> <p>certify [1] - 47:1</p> <p>challenge [5] - 6:25, 7:14, 7:20, 8:23, 9:11</p> <p>challenged [1] - 7:8</p> <p>challenges [1] - 6:14</p> <p>chance [3] - 8:6, 15:10, 29:15</p> <p>change [1] - 29:10</p> <p>changed [2] - 29:7, 29:8</p> <p>changes [2] - 28:24, 29:9</p> <p>checked [1] - 26:5</p> <p>choice [2] - 23:25, 31:21</p> <p>Cincinnati [1] - 3:7</p> <p>CIPRIANI [1] - 2:19</p> <p>circle [1] - 10:19</p> <p>circulated [1] - 29:3</p> <p>cited [1] - 43:23</p> <p>CIVIL [1] - 1:4</p> <p>claim [1] - 12:23</p> <p>claims [3] - 12:15, 19:17, 41:19</p> <p>clarification [1] - 17:9</p> <p>clarifying [2] - 20:24, 31:12</p> <p>clarity [1] - 15:21</p> <p>clear [2] - 9:21, 33:13</p> <p>Clerk [1] - 3:15</p> <p>client [1] - 25:16, 26:10, 26:15, 26:18, 27:3, 27:18, 28:4, 32:12, 32:13, 32:18, 33:20</p> <p>close [4] - 5:22, 13:22, 46:12, 46:15</p> <p>closely [1] - 16:11</p> <p>CMC [2] - 14:18, 45:2</p> | <p>Coast [1] - 2:3</p> <p>codes [1] - 44:1</p> <p>Cohen [1] - 1:8</p> <p>colleagues [1] - 46:10</p> <p>collect [1] - 26:2</p> <p>comfort [1] - 23:5</p> <p>comfortable [5] - 11:22, 27:17, 30:7, 32:23, 34:8</p> <p>coming [3] - 15:2, 36:23, 38:9</p> <p>Commencing [1] - 1:10</p> <p>Committee [1] - 16:17</p> <p>communication [1] - 7:3</p> <p>communications [2] - 29:4, 29:11</p> <p>compel [1] - 36:10</p> <p>complaint [1] - 10:14</p> <p>complete [13] - 5:20, 22:7, 22:10, 22:13, 28:16, 28:17, 30:8, 31:25, 33:1, 38:1, 39:11, 43:14, 44:8</p> <p>completed [4] - 5:5, 22:4, 39:9, 42:15</p> <p>completely [2] - 36:23, 42:24</p> <p>completion [1] - 39:2</p> <p>complicated [1] - 18:19</p> <p>comply [1] - 43:5</p> <p>components [1] - 4:14</p> <p>computer [3] - 1:25, 40:9, 40:10</p> <p>computer-aided [1] - 1:25</p> <p>concern [2] - 23:11, 37:3</p> <p>concerned [7] - 8:19, 9:2, 24:13, 35:17, 37:1, 38:6, 45:14</p> <p>concerns [3] - 11:4, 22:16, 25:18</p> <p>conclude [1] - 32:9</p> <p>concluded [1] - 46:19</p> <p>concretely [1] - 31:5</p> <p>confer [13] - 8:6, 8:20, 12:3, 12:6, 13:24, 14:10, 15:14, 17:6, 19:15, 19:20, 20:22, 21:2, 33:12</p> <p>conference [16] - 6:22, 6:23, 11:17, 11:20, 15:9, 15:10, 16:18, 17:14, 18:11, 18:20, 19:25, 20:10, 21:5, 39:8, 41:10, 45:17</p> | <p>CONFERENCE [1] - 1:6</p> <p>conferred [4] - 5:7, 25:7, 27:3, 42:9</p> <p>conferring [5] - 9:16, 19:24, 26:18, 26:24, 45:12</p> <p>confers [2] - 6:6, 13:1</p> <p>confident [3] - 23:18, 24:1, 28:11</p> <p>confirm [1] - 29:25</p> <p>confirmed [2] - 38:14, 38:24</p> <p>confused [2] - 14:23, 14:25</p> <p>CONLEE [1] - 2:8</p> <p>Conlee [1] - 13:5</p> <p>consensus [1] - 8:14</p> <p>consequences [1] - 44:3</p> <p>consider [2] - 8:25, 44:22</p> <p>contacts [1] - 5:8</p> <p>containing [1] - 29:21</p> <p>contemplated [1] - 16:21</p> <p>continue [4] - 13:19, 30:7, 41:14, 41:16</p> <p>Continued [2] - 2:1, 3:1</p> <p>continues [1] - 30:14</p> <p>contracts [1] - 12:22</p> <p>Convention [1] - 23:2</p> <p>conversation [2] - 25:19, 39:4</p> <p>convincing [1] - 13:21</p> <p>Cooper [1] - 1:9</p> <p>cooperative [1] - 33:7</p> <p>cooperatively [1] - 6:4</p> <p>coordinate [1] - 6:5</p> <p>copy [4] - 25:15, 29:23, 30:3, 34:17</p> <p>core [1] - 37:2</p> <p>Corporation [1] - 3:11</p> <p>correct [5] - 4:16, 8:9, 27:6, 34:22, 47:1</p> <p>corrected [1] - 38:11</p> <p>counsel [4] - 5:5, 5:6, 5:8, 10:12</p> <p>count [1] - 40:23</p> <p>counterproposal [4] - 7:2, 7:18, 8:5, 8:10</p> <p>couple [4] - 12:2, 13:25, 20:24, 30:16</p> <p>course [4] - 7:8, 35:1, 45:1, 45:17</p> <p>Court [34] - 1:23, 5:2, 6:23, 7:1, 7:10, 8:15, 8:17, 9:8, 9:10, 9:14, 12:2, 13:12, 13:23, 14:1, 14:11, 14:13, 14:14, 15:3, 15:8, 15:14, 16:9, 17:5, 17:20, 18:3, 18:4, 37:25, 38:9, 38:15, 38:22, 38:24, 39:2, 39:21, 44:7, 47:4</p> <p>court [1] - 4:4</p> <p>COURT [2] - 1:2, 15:24</p> <p>Court's [6] - 12:9, 15:6, 15:23, 16:5, 17:13, 25:1</p> <p>courtesy [1] - 41:5</p> <p>Courthouse [1] - 1:8</p> <p>Courtroom [1] - 3:16</p> <p>cover [2] - 5:1, 26:15</p> <p>covered [2] - 28:22, 28:23</p> <p>CRC [1] - 47:4</p> <p>CRR [1] - 47:4</p> <p>crucial [1] - 37:2</p> <p>cure [1] - 33:15</p> <p>cured [1] - 24:8</p> <p>current [1] - 30:11</p> <p>custodial [1] - 38:18</p> <p>custodian [3] - 27:8, 38:21, 39:20</p> <p>custodians [9] - 23:12, 23:17, 26:24, 27:17, 38:15, 38:21, 38:23, 39:9, 40:23</p> <p>cutoff [1] - 23:21</p> <p>CVS [1] - 3:11</p> | <p>D</p> <p>DANIEL [1] - 1:20</p> <p>data [2] - 22:20, 22:22</p> <p>databases [1] - 22:19</p> <p>Date [1] - 47:6</p> <p>date [2] - 19:4, 34:21</p> <p>dated [1] - 32:15</p> <p>days [5] - 5:21, 6:1, 18:22, 18:25, 28:7</p> <p>deadline [1] - 39:2</p> <p>deadlines [1] - 32:9</p> <p>dealing [5] - 37:14, 40:19, 40:25, 44:2, 44:5</p> <p>December [5] - 22:3, 28:17, 38:15, 39:3, 39:8</p> <p>decide [2] - 13:23, 32:22</p> <p>decision [2] - 14:4, 30:18</p> <p>decision-making [1] - 30:18</p> <p>declarations [1] - 43:21</p> |
| <p>C</p> <p>calendar [1] - 33:13</p> <p>calendars [1] - 43:2</p> <p>California [2] - 2:3, 3:10</p> <p>Camden [1] - 1:9</p> <p>camera [1] - 7:16</p> <p>Camille [4] - 1:23, 4:3, 16:2, 47:4</p> <p>camillepedano@ gmail.com [1] - 1:23</p> <p>Camp [1] - 2:9</p> <p>candidly [1] - 37:13</p> <p>cannot [1] - 44:16</p> <p>cap [2] - 8:22, 8:24</p> <p>capping [1] - 9:2</p> <p>captured [1] - 10:24</p> | | | | |

| | | | | |
|---|--|--|--|--|
| <p>Defendant^[3] - 5:15, 5:18, 5:20</p> <p>defendant^[3] - 25:11, 38:5, 39:7</p> <p>defendants^[30] - 4:19, 4:21, 5:7, 5:20, 7:1, 8:22, 10:4, 10:9, 10:16, 10:19, 11:5, 11:6, 11:9, 11:20, 13:20, 16:24, 18:16, 20:17, 22:4, 22:6, 23:1, 25:15, 26:21, 30:21, 31:1, 31:10, 32:1, 43:12, 43:24, 46:4</p> <p>Defendants^[6] - 2:13, 2:17, 2:22, 3:4, 3:7, 3:11</p> <p>defendants'^[3] - 10:2, 13:10, 20:9</p> <p>defense^[6] - 5:6, 6:15, 9:7, 10:1, 10:15, 11:7</p> <p>defenses^[6] - 32:2, 32:5, 41:15, 42:5, 44:24, 45:5</p> <p>deficiencies^[3] - 24:8, 24:10, 33:14</p> <p>deficiency^[1] - 22:15</p> <p>delay^[1] - 23:2</p> <p>department^[2] - 27:11, 27:12</p> <p>deponent^[1] - 9:5</p> <p>depos^[2] - 5:8, 5:24</p> <p>deposed^[1] - 42:13</p> <p>deposition^[11] - 4:13, 4:22, 5:21, 6:1, 23:21, 26:25, 37:18, 37:20, 40:12, 41:7, 44:12</p> <p>depositions^[25] - 4:17, 5:3, 6:5, 6:6, 7:9, 7:11, 7:16, 8:2, 8:13, 23:17, 23:20, 23:22, 23:23, 23:25, 24:2, 24:4, 24:14, 31:18, 32:9, 40:3, 40:13, 41:2, 41:13, 42:2, 45:9</p> <p>Deputy^[1] - 3:16</p> <p>designated^[1] - 38:22</p> <p>detail^[2] - 26:8, 27:23</p> <p>detailed^[1] - 23:15</p> <p>determination^[1] - 17:15</p> <p>deterrent^[1] - 41:14</p> <p>developed^[2] - 44:15, 45:11</p> <p>devise^[1] - 8:16</p> <p>DFS^[1] - 6:7</p> | <p>differences^[4] - 14:2, 19:17, 19:18, 23:24</p> <p>different^[2] - 12:2, 15:20</p> <p>digest^[1] - 42:16</p> <p>digested^[1] - 42:15</p> <p>diligence^[2] - 35:13, 42:7</p> <p>diligent^[3] - 25:24, 33:7, 35:8</p> <p>diligently^[1] - 28:4</p> <p>direct^[1] - 34:11</p> <p>direction^[1] - 17:13</p> <p>disagree^[1] - 18:1</p> <p>disagreement^[1] - 20:4</p> <p>disclosed^[2] - 40:11, 40:23</p> <p>disconnect^[1] - 16:20</p> <p>discover^[1] - 13:15</p> <p>discoverable^[1] - 30:23</p> <p>discovered^[1] - 24:3</p> <p>discovery^[25] - 5:23, 5:25, 6:7, 11:17, 11:19, 11:21, 12:12, 13:13, 13:16, 13:19, 13:22, 17:1, 17:16, 18:8, 19:18, 20:9, 21:8, 21:18, 23:13, 24:12, 30:12, 30:14, 39:3, 42:21</p> <p>discuss^[1] - 17:14</p> <p>discussed^[7] - 10:13, 11:18, 11:21, 14:24, 15:1, 17:12, 20:23</p> <p>discussing^[1] - 38:24</p> <p>discussion^[5] - 10:12, 16:16, 17:24, 25:14, 30:13</p> <p>discussions^[2] - 12:10, 19:14</p> <p>dismiss^[1] - 13:13</p> <p>dismissed^[3] - 12:16, 12:24, 43:13</p> <p>dispute^[1] - 4:24</p> <p>disputes^[1] - 7:22</p> <p>distinction^[1] - 12:25</p> <p>DISTRICT^[2] - 1:2, 1:2</p> <p>document^[31] - 6:13, 21:20, 22:5, 22:6, 22:9, 22:12, 22:24, 25:11, 25:22, 26:3, 26:6, 26:13, 26:17, 28:5, 28:7, 28:12, 28:16, 29:23, 30:8, 31:16, 31:21, 31:24, 37:17, 37:22, 39:4, 40:5, 40:7, 40:8,</p> | <p>40:15, 40:23, 42:8</p> <p>documents^[58] - 6:25, 7:8, 7:12, 7:13, 7:15, 7:19, 7:21, 8:19, 8:23, 8:25, 9:1, 9:13, 9:22, 21:19, 22:14, 24:1, 24:5, 24:11, 24:15, 25:8, 25:9, 25:24, 26:1, 26:3, 26:5, 28:8, 28:10, 28:19, 28:20, 28:25, 29:5, 29:7, 29:20, 29:21, 29:22, 29:24, 30:5, 31:25, 33:1, 33:10, 35:8, 37:2, 37:23, 38:4, 38:18, 39:6, 39:17, 40:10, 40:16, 40:17, 40:22, 41:3, 42:10, 42:12, 43:4, 44:6, 44:12</p> <p>dog^[1] - 36:13</p> <p>done^[15] - 7:2, 10:18, 12:10, 26:2, 30:10, 31:4, 31:13, 32:20, 35:9, 41:8, 41:18, 42:9, 43:6, 46:10, 46:11</p> <p>Doshi^[1] - 40:6</p> <p>down^[2] - 8:1, 31:1</p> <p>drabs^[1] - 30:14</p> <p>draft^[10] - 11:4, 17:20, 19:14, 20:25, 24:6, 28:24, 29:19, 29:21, 29:25</p> <p>draw^[1] - 13:1</p> <p>drawn^[1] - 12:7</p> <p>dribs^[1] - 30:14</p> <p>drive^[2] - 29:2, 40:10</p> <p>Drugs^[2] - 3:4, 22:9</p> <p>DUANE^[1] - 2:11</p> <p>due^[6] - 23:1, 23:24, 25:3, 35:12, 42:7, 44:6</p> <p>duplication^[2] - 19:18, 20:5</p> <p>during^[8] - 6:23, 7:16, 8:1, 11:20, 13:1, 20:22, 45:1, 45:16</p> | <p>efforts^[3] - 8:20, 9:23, 25:25</p> <p>Eisenhower^[1] - 1:15</p> <p>either^[4] - 12:8, 13:19, 27:5, 40:7</p> <p>electronic^[1] - 35:2</p> <p>elements^[1] - 9:4</p> <p>email^[12] - 7:3, 32:17, 33:22, 34:4, 37:15, 37:16, 40:5, 40:8, 40:9, 40:21, 40:24, 42:1</p> <p>emailed^[1] - 42:18</p> <p>emails^[1] - 29:21</p> <p>emphasize^[1] - 38:13</p> <p>encompass^[1] - 11:6</p> <p>encouraged^[1] - 7:1</p> <p>end^[7] - 7:9, 10:20, 21:14, 27:20, 39:1, 39:21, 41:17</p> <p>ends^[1] - 34:24</p> <p>engage^[1] - 9:6</p> <p>entire^[4] - 37:24, 38:5, 42:7, 42:16</p> <p>entirely^[1] - 43:13</p> <p>entities^[3] - 22:9, 22:18, 22:23</p> <p>entitled^[1] - 47:2</p> <p>equipment^[1] - 22:19</p> <p>Eric^[1] - 24:19</p> <p>ERIC^[1] - 3:2</p> <p>ERNEST^[1] - 2:20</p> <p>Ernie^[1] - 41:24</p> <p>ESI^[6] - 25:8, 30:25, 31:6, 35:20, 36:1, 36:22</p> <p>especially^[2] - 14:9, 44:13</p> <p>ESQUIRE^[17] - 1:14, 1:17, 1:20, 2:2, 2:5, 2:8, 2:11, 2:12, 2:16, 2:20, 2:20, 3:2, 3:3, 3:6, 3:9, 3:9, 3:14</p> <p>essentially^[2] - 8:9, 15:4</p> <p>eve^[1] - 44:12</p> <p>event^[1] - 32:10</p> <p>evidence^[4] - 29:4, 29:5, 29:8, 35:2</p> <p>evolving^[1] - 8:21</p> <p>exactly^[4] - 32:17, 39:18, 40:25, 43:6</p> <p>example^[3] - 12:21, 23:3, 24:3</p> <p>exceeds^[1] - 7:12</p> <p>exchanged^[1] - 18:10</p> <p>Excuse^[1] - 15:24</p> <p>excuse^[1] - 15:25</p> <p>executed^[1] - 43:20</p> <p>Executive^[1] - 16:17</p> | <p>exercised^[2] - 35:13, 42:7</p> <p>exhaustive^[1] - 26:10</p> <p>exist^[4] - 19:17, 29:11, 29:12, 45:13</p> <p>exists^[1] - 8:22</p> <p>expect^[7] - 16:24, 18:24, 30:10, 30:22, 35:7, 35:18, 36:25</p> <p>expecting^[1] - 38:3</p> <p>explain^[1] - 15:18</p> <p>explanation^[2] - 16:9, 29:1</p> <p>expressed^[1] - 13:10</p> <p>extend^[1] - 31:17</p> <p>extension^[1] - 32:8</p> <p>extent^[3] - 13:20, 30:23, 33:11</p> |
| F | | | | |
| <p>Fact^[6] - 5:15, 5:19, 5:20, 43:14, 43:19, 43:22</p> <p>fact^[5] - 11:21, 24:4, 26:4, 26:25, 27:18</p> <p>failure^[6] - 43:14, 43:19, 43:20, 43:21, 43:22, 43:25</p> <p>fairly^[1] - 10:9</p> <p>faith^[1] - 35:8</p> <p>familiarity^[1] - 34:13</p> <p>far^[5] - 29:3, 29:11, 31:1, 39:16, 40:3</p> <p>fast^[1] - 18:24</p> <p>favorable^[2] - 9:5, 9:15</p> <p>felt^[2] - 7:17, 11:23</p> <p>few^[6] - 16:13, 18:22, 18:25, 22:13, 28:21, 40:16</p> <p>file^[4] - 30:2, 34:12, 40:7, 43:19</p> <p>filed^[1] - 12:3</p> <p>files^[1] - 38:19</p> <p>filing^[1] - 44:19</p> <p>final^[7] - 24:5, 29:2, 29:19, 29:22, 29:24, 30:1, 30:3</p> <p>fine^[5] - 15:11, 17:11, 18:6, 18:23, 20:14</p> <p>finish^[1] - 6:21</p> <p>finished^[1] - 39:15</p> <p>first^[8] - 4:13, 5:3, 22:17, 25:20, 31:3, 32:8, 34:20, 42:4</p> <p>fish^[1] - 24:11</p> <p>five^[1] - 34:1</p> <p>Florida^[1] - 1:21</p> <p>fluid^[1] - 42:8</p> <p>flux^[2] - 11:25, 17:23</p> | | | | |

| | | | | |
|---|--|--|---|---|
| <p>follow [2] - 19:22, 31:12</p> <p>follow-up [1] - 31:12</p> <p>following [1] - 16:3</p> <p>FOR [1] - 1:2</p> <p>foregoing [1] - 47:1</p> <p>foremost [1] - 42:4</p> <p>form [1] - 32:16</p> <p>forth [1] - 20:5</p> <p>forum [1] - 45:21</p> <p>forward [8] - 18:5, 18:6, 21:4, 23:19, 23:25, 24:2, 24:13, 36:6</p> <p>four [3] - 18:4, 41:12, 41:13</p> <p>frankly [3] - 12:13, 35:19, 44:14</p> <p>FREEMAN [1] - 1:14</p> <p>Friday [4] - 7:3, 37:21, 42:13, 45:9</p> <p>front [2] - 8:17, 9:10</p> <p>future [1] - 17:17</p> | <p>GREENBERG [1] - 2:15</p> <p>groups [1] - 10:19</p> <p>guess [4] - 18:9, 33:20, 35:10, 46:7</p> <p>guidance [6] - 12:9, 14:1, 14:9, 15:6, 17:20, 45:20</p> <p>Gupta [2] - 37:21, 42:13</p> | <p>HONIK [5] - 1:17, 1:17, 4:6, 8:8, 9:24</p> <p>Honik [3] - 6:23, 7:7, 8:7</p> <p>Honor [60] - 4:5, 4:20, 5:15, 6:11, 6:18, 7:15, 8:8, 9:1, 9:19, 9:24, 10:8, 11:8, 11:13, 13:5, 14:20, 14:22, 16:13, 16:19, 17:10, 17:19, 19:1, 19:7, 19:8, 20:19, 20:22, 21:6, 21:12, 21:15, 21:24, 22:18, 23:9, 24:18, 24:23, 24:25, 26:7, 26:22, 27:3, 27:22, 28:3, 32:20, 32:25, 33:9, 34:7, 34:16, 34:23, 36:17, 36:21, 37:4, 37:13, 38:7, 41:11, 41:24, 43:7, 43:11, 45:19, 45:24, 46:4, 46:17, 46:18</p> <p>Honor's [3] - 7:22, 8:12, 12:5</p> <p>Honorable [2] - 3:15, 4:2</p> <p>HONORABLE [1] - 1:11</p> <p>hope [2] - 9:14, 26:20</p> <p>hopefully [1] - 20:6</p> <p>hoping [2] - 36:4, 46:12</p> <p>hour [4] - 22:25, 37:15, 37:16, 41:9</p> <p>hours [2] - 23:24, 33:10</p> <p>Huahai [1] - 2:14</p> <p>hundred [2] - 22:14, 40:16</p> | <p>14:23, 15:1</p> <p>indeed [1] - 45:13</p> <p>index [1] - 28:21</p> <p>India [2] - 22:9, 23:23</p> <p>Indian [1] - 38:23</p> <p>indicated [2] - 8:3, 25:5</p> <p>individuals [1] - 38:17</p> <p>Industries [1] - 2:17</p> <p>inefficient [1] - 17:25</p> <p>inevitably [1] - 31:11</p> <p>information [9] - 22:23, 23:3, 23:6, 27:13, 30:20, 30:23, 34:2, 34:3</p> <p>instances [1] - 40:14</p> <p>instead [1] - 41:8</p> <p>instruction [2] - 27:10, 27:11</p> <p>intended [1] - 15:3</p> <p>intending [1] - 37:17</p> <p>intent [1] - 43:4</p> <p>intentional [1] - 33:5</p> <p>intermediate [1] - 29:12</p> <p>internally [1] - 8:11</p> <p>interruption [1] - 36:15</p> <p>interview [5] - 30:25, 31:6, 31:11, 31:12, 32:20</p> <p>interviews [1] - 31:9</p> <p>involved [1] - 23:1</p> <p>ironed [1] - 12:20</p> <p>issue [29] - 9:9, 9:16, 9:18, 10:1, 11:4, 11:12, 11:18, 12:4, 15:11, 18:3, 21:17, 22:4, 26:16, 26:22, 28:6, 29:14, 29:17, 29:19, 29:20, 30:13, 31:15, 37:8, 37:10, 37:14, 38:22, 39:24, 42:21, 44:5</p> <p>issues [21] - 6:2, 6:7, 7:14, 8:2, 8:17, 9:20, 12:1, 12:21, 13:22, 16:16, 20:5, 22:11, 23:2, 25:3, 28:9, 28:12, 28:22, 28:23, 37:3, 39:12, 40:1</p> <p>item [2] - 4:13, 6:13</p> <p>items [1] - 33:14</p> <p>iteration [1] - 28:10</p> <p>iterations [2] - 26:1, 28:10</p> <p>itself [1] - 34:13</p> | <p>Jeff [1] - 19:9</p> <p>JEFFREY [1] - 3:6</p> <p>JERSEY [1] - 1:2</p> <p>Jersey [3] - 1:9, 1:15, 3:4</p> <p>JESSICA [2] - 2:12, 2:20</p> <p>job [3] - 24:9, 40:2, 46:10</p> <p>Johns [5] - 37:20, 39:18, 42:3, 42:13, 42:25</p> <p>Johnston [3] - 10:8, 10:24, 11:8</p> <p>JOHNSTON [10] - 3:9, 10:7, 11:2, 11:8, 11:13, 11:15, 19:7, 20:21, 21:6, 21:9</p> <p>Judge [6] - 22:3, 22:5, 25:6, 28:1, 31:2, 32:7</p> <p>JUDGE [65] - 4:3, 4:7, 4:23, 5:17, 6:8, 6:12, 6:20, 7:5, 8:7, 9:17, 9:21, 10:1, 10:22, 11:1, 11:3, 11:11, 11:14, 13:3, 14:3, 14:15, 14:19, 14:21, 15:25, 17:8, 17:15, 18:7, 18:17, 18:22, 19:3, 19:6, 19:10, 20:8, 20:14, 21:4, 21:7, 21:10, 21:13, 21:16, 22:1, 24:16, 24:20, 28:2, 28:14, 30:9, 32:6, 33:16, 33:25, 34:5, 34:8, 34:11, 34:18, 34:25, 36:15, 36:19, 36:24, 37:6, 37:10, 41:20, 43:9, 44:11, 45:22, 45:25, 46:3, 46:5, 46:14</p> <p>Judicial [1] - 3:15</p> <p>June [1] - 25:21</p> |
| <p>G</p> <p>game [1] - 34:4</p> <p>gathered [1] - 30:22</p> <p>general [1] - 22:20</p> <p>GEOPPINGER [5] - 3:6, 19:8, 19:11, 20:11, 21:11</p> <p>Geoppinger [3] - 11:10, 19:9, 19:10</p> <p>Georgia [1] - 2:17</p> <p>given [4] - 7:10, 27:10, 31:21, 35:18</p> <p>glad [1] - 24:20</p> <p>GOLDBERG [10] - 2:11, 4:5, 6:17, 6:21, 7:6, 9:19, 9:25, 10:5, 46:4, 46:17</p> <p>Goldberg [7] - 6:16, 6:18, 8:9, 9:6, 9:17, 32:15, 33:19</p> <p>Goldberg's [1] - 9:15</p> <p>goldenberg [2] - 37:12, 42:1</p> <p>GOLDENBERG [7] - 2:5, 2:5, 10:24, 37:13, 43:7, 43:11, 45:19</p> <p>Goldenberg [6] - 10:13, 10:22, 21:23, 37:7, 42:18, 43:10</p> <p>GOLOMB [1] - 1:17</p> <p>good-faith [1] - 35:8</p> <p>Gorijavolu [1] - 40:6</p> <p>grant [3] - 44:16, 45:10, 45:15</p> <p>great [1] - 6:12</p> | <p>H</p> <p>Hague [2] - 23:2, 25:3</p> <p>half [1] - 38:17</p> <p>handled [1] - 14:7</p> <p>hands [1] - 26:12</p> <p>happily [1] - 46:9</p> <p>happy [2] - 20:6, 39:13</p> <p>hard [4] - 18:24, 29:6, 34:6, 46:11</p> <p>hard-and-fast [1] - 18:24</p> <p>head [3] - 27:11, 27:12, 35:15</p> <p>headway [1] - 21:2</p> <p>Healthcare [1] - 2:14</p> <p>hear [4] - 4:9, 6:19, 27:18, 38:4</p> <p>heard [4] - 6:8, 19:8, 38:2, 44:25</p> <p>hearing [3] - 24:23, 30:15, 44:20</p> <p>heart [1] - 37:5</p> <p>HEINZ [1] - 2:20</p> <p>Heinz [2] - 39:8, 41:21</p> <p>held [2] - 4:1, 43:17</p> <p>hello [1] - 37:13</p> <p>help [1] - 17:8</p> <p>helpful [4] - 15:20, 31:7, 31:10, 36:1</p> <p>Hetero [21] - 3:4, 21:17, 22:8, 22:9, 22:18, 23:1, 23:4, 23:9, 23:12, 24:6, 24:17, 25:2, 25:5, 25:20, 28:15, 30:12, 30:21, 33:6</p> <p>Hetero's [2] - 22:12, 31:18</p> <p>highly [1] - 41:18</p> <p>Highway [1] - 2:3</p> <p>HILL [1] - 3:2</p> <p>history [3] - 13:9, 25:1, 27:15</p> <p>hold [12] - 23:13, 23:16, 26:22, 26:23, 27:5, 27:7, 27:10, 27:13, 27:16, 27:19, 36:13, 38:21</p> | <p>I</p> <p>idea [3] - 9:2, 24:14, 42:4</p> <p>identified [4] - 24:8, 26:1, 27:8, 27:17</p> <p>identify [2] - 22:19, 29:23</p> <p>identifying [1] - 24:9</p> <p>important [2] - 16:14, 27:2</p> <p>IN [1] - 1:5</p> <p>inappropriate [1] - 40:18</p> <p>Inc [4] - 2:18, 2:18, 2:22, 3:11</p> <p>include [1] - 27:7</p> <p>including [1] - 12:2</p> <p>inconsistent [2] -</p> | <p>J</p> <p>Jasleen [1] - 37:21</p> | <p>K</p> <p>KANNER [1] - 2:8</p> <p>KATZ [1] - 1:14</p> <p>keep [1] - 30:6</p> <p>kept [1] - 22:22</p> <p>kind [3] - 7:25, 25:14, 34:4</p> <p>KIRTLAND [1] - 2:2</p> <p>known [1] - 38:16</p> <p>Koschineg [1] - 41:24</p> <p>KOSCHINEG [3] - 2:20, 41:23, 45:24</p> <p>KRISTEN [1] - 3:9</p> <p>Kristen [3] - 10:5,</p> |

| | | | | |
|--|--|--|--|--|
| 11:9, 14:24 Kugler [1] - 3:15 | list [4] - 5:8, 26:10, 27:6, 27:10 lists [1] - 25:25 lit [2] - 23:13, 23:16 lit-hold [2] - 23:13, 23:16 LITIGATION [1] - 1:5 litigation [9] - 26:22, 26:23, 27:5, 27:7, 27:10, 27:13, 27:16, 27:19, 38:20 LLC [6] - 1:14, 2:5, 2:8, 2:14, 2:18, 2:22 LLP [6] - 2:2, 2:11, 2:15, 3:2, 3:5, 3:8 load [2] - 28:20, 40:15 locate [1] - 29:22 Lockard's [1] - 4:22 look [6] - 20:3, 21:4, 28:19, 28:21, 29:15, 40:4 looking [5] - 14:16, 17:9, 28:18, 28:20, 37:1 looks [3] - 11:10, 28:23, 29:25 LORETTA [1] - 3:14 Los [1] - 3:10 lose [2] - 16:2, 44:3 Louisiana [1] - 2:9 Ltd [2] - 2:14, 2:17 | meet [18] - 4:25, 6:6, 8:4, 8:6, 8:20, 12:3, 12:6, 13:1, 13:24, 14:10, 15:13, 17:6, 19:15, 19:20, 20:22, 21:2, 33:12, 42:22 meet-and-confer [1] - 8:20 meeting [5] - 9:16, 19:24, 22:25, 26:24, 45:12 meetings [1] - 9:20 mentioned [2] - 5:10, 37:19 met [3] - 5:6, 25:7, 42:9 metadata [1] - 40:5 mics [1] - 4:8 midday [1] - 8:10 might [4] - 7:9, 7:15, 7:22, 11:5 mine [1] - 21:24 minimal [1] - 8:11 minimum [1] - 7:13 Minneapolis [1] - 2:6 Minnesota [1] - 2:6 minute [1] - 37:17 misconduct [1] - 33:5 missed [1] - 27:23 missing [3] - 24:15, 26:1, 30:4 Mitchell [1] - 1:8 MITCHELL [1] - 1:20 Monday [2] - 8:10, 42:16 month [1] - 39:3 months [7] - 7:9, 8:1, 25:21, 39:1, 44:6 morning [6] - 5:7, 26:11, 29:15, 33:24, 34:3, 37:18 MORRIS [1] - 2:11 motion [15] - 10:2, 35:11, 36:9, 36:10, 42:24, 44:16, 44:19, 44:21, 44:24, 45:6, 45:16, 45:20 motions [3] - 10:13, 10:17, 13:13 move [3] - 18:5, 45:3 moving [1] - 36:6 MR [41] - 4:5, 4:6, 6:10, 6:17, 6:21, 7:6, 8:8, 9:19, 9:24, 9:25, 10:5, 19:8, 19:11, 20:11, 21:11, 21:24, 22:2, 24:18, 24:22, 28:3, 28:15, 31:4, 32:7, 33:20, 34:1, 34:6, 34:10, 34:16, | 34:19, 34:21, 34:23, 36:17, 36:21, 36:25, 37:7, 41:23, 45:24, 46:4, 46:8, 46:17, 46:18 MS [35] - 4:20, 4:24, 5:18, 10:7, 10:24, 11:2, 11:8, 11:13, 11:15, 13:5, 14:7, 14:17, 14:20, 14:22, 16:6, 16:19, 17:10, 17:18, 18:13, 18:14, 18:15, 18:18, 19:1, 19:2, 19:4, 19:7, 20:19, 20:21, 21:6, 21:9, 21:15, 37:13, 43:7, 43:11, 45:19 multi [1] - 22:25 multi-hour [1] - 22:25 multiday [1] - 23:22 multiple [3] - 12:10, 22:11, 22:16 multiples [1] - 8:13 multiplied [1] - 7:11 must [1] - 17:16 mute [5] - 4:8, 10:6, 11:16, 43:8, 43:9 muted [3] - 6:16, 41:21, 41:22 Mylan [2] - 9:1, 23:4 | 11:18, 13:8, 20:2 never [7] - 25:12, 25:13, 32:13, 35:2, 38:20, 41:18, 46:8 NEW [1] - 1:2 New [4] - 1:9, 1:15, 2:9, 3:4 news [1] - 9:15 next [19] - 6:13, 7:8, 8:1, 10:1, 10:15, 11:4, 11:19, 13:25, 14:17, 15:8, 17:14, 18:11, 18:20, 19:25, 21:17, 34:9, 34:14, 37:8, 37:10 nice [2] - 30:13, 41:4 NIGH [2] - 1:20, 6:10 Nigh [4] - 4:25, 5:5, 6:4, 6:8 night [2] - 40:14, 42:2 nilly [1] - 8:18 non [2] - 6:13, 6:25 non-responsive [2] - 6:13, 6:25 none [4] - 29:10, 29:11, 39:12, 40:10 nonstarter [2] - 8:24, 9:3 note [1] - 31:8 noted [2] - 22:24, 28:25 nothing [5] - 9:19, 21:11, 21:14, 45:24, 46:4 notice [5] - 20:23, 20:25, 27:7, 27:13, 27:16 notices [5] - 20:17, 22:15, 23:13, 23:16, 26:23 November [7] - 25:22, 26:14, 32:15, 33:18, 36:2, 37:25, 44:6 number [9] - 7:11, 7:15, 7:21, 28:8, 28:17, 31:15, 31:23, 33:10 NUMBER [1] - 1:4 numbers [1] - 4:16 numerous [3] - 23:14, 23:21, 24:5 |
| L | M | N | O | |
| Labs [6] - 3:4, 22:8, 25:2, 25:5, 25:20, 33:6 Labs' [1] - 22:9 LAGOS [4] - 2:16, 4:20, 4:24, 5:18 Lagos [1] - 4:21 laid [1] - 8:9 larger [1] - 37:23 larry [1] - 3:16 Lasalle [1] - 2:6 last [12] - 6:22, 6:23, 11:17, 13:8, 15:13, 20:22, 21:1, 22:13, 28:7, 32:25, 37:17, 42:2 last-minute [1] - 37:17 late [3] - 25:2, 40:14, 42:11 late-night [1] - 40:14 lately [1] - 46:12 Law [1] - 3:15 LAW [1] - 2:5 lay [1] - 26:12 leading [1] - 39:1 learned [3] - 42:5, 42:16, 42:17 learning [1] - 35:15 least [8] - 5:21, 17:11, 18:25, 21:21, 28:18, 28:21, 29:14, 34:9 leave [2] - 10:3, 10:14 left [2] - 10:18, 22:16 letter [38] - 4:11, 4:12, 7:4, 8:3, 10:1, 12:15, 14:5, 18:9, 18:21, 21:19, 22:17, 23:15, 25:10, 25:12, 25:15, 26:7, 26:13, 26:14, 26:20, 27:5, 28:25, 30:12, 31:8, 32:13, 32:14, 32:16, 32:19, 32:23, 33:18, 34:1, 34:12, 34:13, 34:17, 34:20, 34:21, 34:22, 36:1, 43:24 letters [2] - 12:3, 45:13 letting [1] - 35:21 level [2] - 23:5, 26:2 LEVIN [1] - 1:20 LIABILITY [1] - 1:5 likely [1] - 35:20 limit [1] - 7:24 limited [1] - 17:7 line [2] - 12:6, 27:1 | MacStravic [1] - 3:16 maintained [1] - 13:11 malicious [1] - 43:3 management [5] - 15:9, 26:9, 39:8, 41:9, 45:17 manner [2] - 4:10, 43:15 manufacturer [1] - 8:25 marked [1] - 6:25 Market [1] - 1:18 Marlene [1] - 10:13 MARLENE [1] - 2:5 Master [1] - 4:2 master [1] - 10:14 MASTER [1] - 1:11 matter [7] - 14:4, 21:18, 44:11, 44:15, 44:17, 45:14, 47:2 MAZIE [1] - 1:14 mean [5] - 23:13, 28:18, 29:10, 30:5, 43:5 mechanical [1] - 1:25 mechanism [2] - 8:16, 9:9 | name [1] - 4:20 named [2] - 5:20, 37:21 names [1] - 23:15 NDC [1] - 44:1 NE [1] - 2:16 near [1] - 17:17 nearly [1] - 28:5 necessary [2] - 32:3, 32:4 need [12] - 9:20, 12:8, 12:9, 16:23, 23:7, 23:19, 23:22, 24:2, 31:11, 32:11, 34:2, 41:17 needed [1] - 41:3 needs [7] - 18:18, 32:24, 33:11, 33:21, 41:13, 44:9, 44:20 negotiate [4] - 15:5, 15:6, 15:19 negotiated [5] - 11:23, 12:7, 15:15, 16:10, 17:21 negotiating [1] - 11:23 negotiation [1] - 16:7 negotiations [3] - | objection [1] - 32:8 obviously [7] - 7:21, 10:16, 16:16, 20:6, 26:23, 31:7, 42:18 occur [2] - 8:20, 14:17 occurred [1] - 30:25 odd [1] - 23:24 | |

| | | | | |
|---|---|---|---|---|
| OF ^[1] - 1:2 Official ^[1] - 1:23 official ^[2] - 29:22, 30:2 Ohio ^[1] - 3:7 once ^[2] - 32:20, 42:16 one ^[19] - 4:14, 7:20, 12:2, 14:10, 15:20, 21:2, 24:3, 26:2, 28:15, 28:23, 29:17, 31:6, 35:1, 37:19, 38:4, 38:21, 39:19, 40:17, 41:5 ones ^[2] - 12:18, 24:12 ongoing ^[1] - 11:18 open ^[1] - 33:14 opportunity ^[4] - 16:15, 44:25, 45:3, 45:7 optimal ^[1] - 31:19 oral ^[1] - 45:16 orally ^[2] - 27:5, 45:1 order ^[3] - 4:12, 24:2, 28:5 ordered ^[5] - 22:18, 31:2, 31:6, 31:14, 32:11 ordering ^[1] - 30:24 orders ^[2] - 43:18, 43:25 Orleans ^[1] - 2:9 ourselves ^[1] - 43:2 outline ^[1] - 12:15 outlined ^[1] - 12:1 Outlook ^[2] - 40:8 outstanding ^[2] - 6:6, 22:16 overlap ^[1] - 27:1 oversaw ^[1] - 25:6 own ^[1] - 17:3 | 36:19, 39:25 PAREKH ^[9] - 2:2, 21:24, 22:2, 28:15, 31:4, 34:21, 36:21, 36:25, 37:7 Park ^[1] - 3:10 Parkway ^[2] - 1:15, 2:21 part ^[4] - 8:21, 27:24, 31:15, 33:6 partial ^[1] - 34:9 particular ^[2] - 22:21, 28:10 parties ^[10] - 7:10, 7:25, 12:6, 14:2, 15:16, 17:6, 25:6, 26:14, 26:24, 27:18 party ^[2] - 25:2, 35:23 passed ^[1] - 13:18 past ^[3] - 14:7, 31:18, 33:10 pattern ^[2] - 41:12, 44:15 pause ^[2] - 13:20, 36:12 Pedano ^[2] - 1:23, 47:4 pending ^[3] - 6:2, 9:23, 13:13 Pennsylvania ^[3] - 1:18, 2:13, 2:21 Pensacola ^[1] - 1:21 people ^[3] - 27:14, 27:16, 38:18 per ^[6] - 7:8, 7:12, 7:21, 8:25, 9:5, 9:15 percent ^[2] - 35:20, 35:21 perfect ^[1] - 27:1 perfection ^[2] - 36:25, 38:3 period ^[3] - 7:16, 8:1, 45:11 permit ^[1] - 27:22 person ^[2] - 27:4, 27:9 persons ^[1] - 4:8 pertain ^[3] - 12:15, 42:17 Pharma ^[3] - 2:18, 2:22, 2:22 Pharmaceutical ^[1] - 2:17 Pharmaceuticals ^[3] - 2:13, 2:14, 2:18 pharmacies ^[11] - 11:10, 12:16, 12:24, 15:10, 16:14, 17:12, 18:4, 19:16, 19:19, 21:8, 21:9 Pharmacy ^[1] - 3:11 | pharmacy ^[5] - 10:9, 11:5, 11:9, 11:20, 20:17 phases ^[1] - 13:17 Philadelphia ^[2] - 1:18, 2:13 physicians ^[1] - 4:17 Piedmont ^[1] - 2:16 places ^[1] - 40:4 plaintiff ^[2] - 4:13, 26:16 Plaintiff ^[3] - 43:14, 43:19, 43:22 Plaintiffs ^[6] - 1:16, 1:19, 1:22, 2:4, 2:7, 2:10 plaintiffs ^[34] - 4:15, 5:25, 6:24, 7:3, 7:7, 7:19, 8:3, 8:6, 9:20, 10:20, 11:22, 12:19, 13:4, 13:6, 15:2, 15:18, 15:21, 16:8, 16:12, 18:1, 25:10, 25:14, 26:13, 26:21, 27:16, 39:12, 40:21, 42:6, 42:25, 43:17, 44:2, 44:3, 44:7, 46:11 plaintiffs' ^[8] - 5:5, 5:8, 5:23, 5:24, 10:2, 10:12, 24:9, 43:13 plan ^[2] - 5:12, 10:19 planning ^[1] - 19:21 pleadings ^[5] - 10:17, 11:25, 12:14, 16:8, 17:24 point ^[24] - 11:23, 11:24, 12:8, 12:10, 12:20, 12:24, 13:17, 16:7, 17:21, 18:1, 18:7, 24:1, 30:18, 32:22, 32:25, 36:8, 36:11, 38:9, 39:5, 41:18, 42:20, 42:23, 43:12, 43:15 pointed ^[2] - 39:25, 42:19 policies ^[2] - 25:12, 26:17 posed ^[1] - 20:23 position ^[13] - 13:10, 14:11, 14:12, 16:22, 17:3, 17:22, 18:1, 18:10, 18:15, 20:1, 20:8, 20:20 positions ^[2] - 18:20, 20:6 possibility ^[1] - 7:25 possible ^[2] - 6:24, 33:7 | potential ^[1] - 7:15 potentially ^[2] - 7:22, 42:12 practices ^[1] - 26:9 Prasad ^[1] - 40:6 preclude ^[1] - 44:18 preclusion ^[2] - 33:2, 45:5 prejudging ^[1] - 8:20 prejudice ^[1] - 43:13 prejudiced ^[1] - 45:8 prejudices ^[1] - 35:23 prejudicial ^[1] - 41:19 premature ^[4] - 32:21, 33:3, 42:5, 42:24 prepared ^[2] - 16:13, 17:14 preparing ^[1] - 24:4 prescribers ^[1] - 5:10 prescribing ^[1] - 4:17 present ^[11] - 13:21, 14:1, 14:13, 16:9, 16:15, 18:10, 36:9, 44:20, 44:21, 45:5, 46:1 PRESENT ^[1] - 3:13 presented ^[8] - 6:23, 7:19, 14:4, 25:25, 36:8, 44:17, 44:23, 45:11 preserving ^[1] - 9:11 presume ^[1] - 19:25 pretty ^[1] - 13:9 previously ^[3] - 15:1, 17:13, 39:17 Princeton ^[1] - 3:4 Prinston ^[1] - 2:13 PRISELAC ^[1] - 2:12 problem ^[1] - 30:9 problems ^[3] - 35:22, 38:10, 38:11 proceed ^[4] - 4:4, 4:10, 12:13, 15:7 proceeding ^[1] - 19:15 proceedings ^[2] - 46:19, 47:2 PROCEEDINGS ^[1] - 4:1 Proceedings ^[1] - 1:25 process ^[12] - 5:4, 5:12, 8:16, 8:17, 19:24, 25:6, 26:17, 41:4, 41:17, 42:8, 42:16, 43:12 PROCTOR ^[1] - 1:20 produce ^[3] - 25:24, 35:8, 42:25 produced ^[20] - 1:25, 21:20, 22:15, 23:17, | 23:18, 24:11, 29:14, 30:6, 30:23, 31:25, 33:9, 35:3, 38:5, 39:5, 39:7, 39:15, 40:6, 42:12, 44:12 producing ^[3] - 35:23, 41:4, 42:10 production ^[20] - 11:5, 11:19, 22:5, 24:10, 25:22, 28:7, 28:20, 30:8, 31:17, 31:25, 35:22, 36:3, 37:17, 37:22, 37:24, 38:1, 38:10, 39:5, 39:23, 44:8 productions ^[10] - 21:21, 22:7, 22:10, 22:12, 26:3, 28:5, 28:13, 31:21, 36:2, 40:14 productive ^[3] - 4:25, 10:12, 19:20 PRODUCTS ^[1] - 1:5 professional ^[1] - 41:5 progress ^[5] - 12:18, 12:19, 21:18, 35:25, 36:5 promptly ^[1] - 9:16 proper ^[2] - 27:18, 43:25 properly ^[2] - 41:8, 43:21 proportionality ^[1] - 17:25 proposal ^[4] - 7:17, 9:4, 9:5, 17:11 propose ^[1] - 14:3 proposed ^[4] - 7:7, 8:15, 10:17, 11:22 proposing ^[4] - 14:5, 15:21, 16:8 prosecute ^[1] - 41:19 protocol ^[2] - 4:8, 5:12 provide ^[9] - 7:1, 14:9, 14:11, 17:9, 25:16, 33:17, 43:20, 43:25 provided ^[5] - 5:7, 7:18, 23:3, 23:4, 34:14 providing ^[2] - 26:4, 34:8 purposes ^[1] - 27:3 put ^[3] - 18:24, 29:1, 35:14 |
| P | | | | |
| P.A ^[1] - 1:20 P.C ^[2] - 1:17, 2:19 p.m ^[5] - 1:10, 4:2, 36:14, 40:22, 46:19 Pacific ^[1] - 2:3 PACKARD ^[1] - 2:2 pads ^[1] - 40:7 Page ^[1] - 38:15 pages ^[4] - 21:19, 22:14, 26:5, 34:1 PAPANTONIO ^[1] - 1:20 Parekh ^[18] - 21:25, 25:5, 25:18, 27:6, 27:21, 28:6, 28:9, 28:12, 28:14, 31:3, 32:12, 32:23, 33:8, 33:10, 34:19, 35:10, | | | | |
| Q | | | | |
| questioned ^[1] - 39:22 questions ^[12] - 14:13, 20:24, 21:1, 25:11, 26:10, 26:19, 26:20, | | | | |

| | | | | |
|---|---|--|--|--|
| 31:12, 33:18, 35:16, 43:21, 46:15 quite [1] - 44:13 | 20:24 regularly [1] - 45:1 relate [1] - 17:23 related [1] - 37:7 relating [1] - 37:19 relevance [1] - 17:24 relevant [1] - 38:18 relief [4] - 36:11, 45:7, 45:10, 45:16 rely [3] - 32:1, 32:4, 33:3 remaining [1] - 5:4 remedy [1] - 33:4 remind [2] - 8:15, 9:8 REMOTE [1] - 1:7 remotely [1] - 4:1 repeat [1] - 23:15 repeatedly [2] - 39:22, 45:12 reply [1] - 22:20 report [2] - 27:14, 36:5 reporter [1] - 4:4 REPORTER [1] - 15:24 Reporter [1] - 1:23 Reporter/ Transcriber [1] - 47:4 represent [1] - 35:7 representation [2] - 30:19, 35:5 represented [1] - 22:8 request [2] - 45:10, 45:16 requested [2] - 26:6, 26:8 requests [20] - 11:4, 11:19, 11:21, 11:24, 12:11, 12:12, 12:14, 12:21, 15:4, 15:15, 15:19, 16:22, 17:16, 17:21, 18:8, 19:14, 20:4, 42:6, 42:23, 43:5 reschedule [1] - 41:7 resolution [1] - 5:22 respect [11] - 5:14, 5:18, 8:5, 12:21, 17:7, 19:18, 20:16, 21:7, 26:7, 26:22, 32:25 respectfully [4] - 25:18, 32:12, 33:8, 41:11 respective [1] - 10:19 respond [11] - 5:25, 20:20, 31:3, 32:12, 32:14, 32:16, 32:22, 33:21, 43:8, 43:21, 45:7 | responded [1] - 24:7 responding [2] - 31:8, 45:1 responds [2] - 33:22, 33:23 response [9] - 10:2, 10:15, 21:1, 22:15, 22:18, 33:17, 34:9, 34:12, 36:1 response [1] - 46:2 responses [3] - 5:23, 23:14, 31:9 responsive [7] - 6:13, 6:25, 22:20, 25:16, 34:3, 35:8, 35:19 result [1] - 35:22 resulting [1] - 37:15 Retailer [1] - 3:11 retailers [1] - 13:13 retention [4] - 25:12, 26:8, 26:13, 26:17 reverse [1] - 29:20 review [9] - 7:15, 9:22, 18:25, 25:7, 33:11, 33:13, 36:3, 39:9, 39:15 RFPs [3] - 15:17, 16:6, 16:9 richer [2] - 10:11, 17:8 Richer [4] - 11:9, 14:24, 15:24, 15:25 RICHER [8] - 3:9, 14:22, 16:6, 17:10, 17:18, 18:14, 18:18, 19:2 ripe [3] - 12:13, 15:22, 16:5 Rite [1] - 3:11 RMR [1] - 47:4 road [1] - 31:1 Road [2] - 2:16, 3:3 Robert [1] - 3:15 rollcall [1] - 22:5 Roseland [1] - 1:15 Roszel [1] - 3:3 round [1] - 11:19 route [1] - 9:5 RPR [1] - 47:4 RUBEN [1] - 1:17 rule [2] - 15:14, 17:5 ruling [5] - 15:23, 16:5, 16:21, 16:24, 17:1 rulings [1] - 14:1 running [1] - 23:20 rush [1] - 40:15 | sanctions [5] - 35:11, 38:8, 42:5, 44:16, 45:4 sand [1] - 35:15 Sarah [5] - 10:5, 10:6, 10:8, 11:8, 20:19 SARAH [1] - 3:9 satisfactory [1] - 43:15 scale [1] - 40:19 scenario [1] - 39:18 schedule [6] - 4:14, 10:15, 18:19, 18:24, 23:22, 23:24 scheduled [5] - 5:4, 5:9, 5:11, 5:24, 45:2 schedules [1] - 32:10 scheduling [2] - 4:15, 4:16 Schneider [4] - 22:4, 22:5, 25:6, 31:2 search [3] - 35:14, 40:9 searched [2] - 38:19, 40:5 searches [1] - 42:10 second [2] - 32:11, 36:12 see [5] - 4:3, 10:21, 12:6, 34:18 seek [2] - 12:9, 45:7 seeking [2] - 17:20, 18:2 selects [1] - 33:13 send [6] - 5:12, 25:11, 33:22, 34:16, 34:19, 34:23 sending [1] - 40:22 sense [3] - 15:16, 15:18, 18:3 sensitive [2] - 35:23, 45:9 sent [12] - 7:3, 25:15, 26:10, 26:13, 26:14, 26:21, 26:23, 32:13, 34:3, 36:2, 38:20 Sentry [1] - 2:21 separate [1] - 19:16 September [1] - 43:23 serious [5] - 23:11, 44:11, 44:17, 44:18, 45:14 servers [1] - 22:22 service [2] - 23:2, 25:3 session [2] - 15:22, 16:4 set [4] - 25:11, 26:19, 39:2, 41:2 Seth [1] - 6:18 SETH [1] - 2:11 | seven [2] - 5:21, 6:1 several [1] - 25:25 severe [1] - 44:3 Shah [5] - 22:7, 27:22, 28:2, 30:22, 31:24 SHAH [2] - 3:3, 28:3 shared [2] - 29:1, 40:10 Sheet [3] - 43:14, 43:19, 43:22 Sheets [3] - 5:15, 5:19, 5:20 short [1] - 14:12 show [3] - 40:7, 43:18, 43:25 showing [1] - 33:4 shown [1] - 35:12 shows [1] - 35:6 side [2] - 44:2, 44:25 signed [1] - 43:20 significant [3] - 7:10, 24:15, 33:9 similar [1] - 20:12 simply [6] - 9:3, 23:4, 23:20, 35:4, 43:4, 45:15 single [6] - 27:8, 28:6, 38:9, 40:5, 40:7 siren [1] - 6:19 Slater [1] - 46:3 SLATER [4] - 1:14, 1:14, 46:8, 46:18 slight [1] - 22:2 slightly [1] - 25:2 sluggish [1] - 35:22 small [2] - 39:5, 39:23 smaller [2] - 39:6, 44:1 SMITH [1] - 3:14 Solco [1] - 2:14 sometimes [2] - 8:13, 29:8 somewhat [2] - 14:23, 14:25 soon [1] - 34:24 sooner [1] - 44:24 SOPs [1] - 28:24 sorry [5] - 6:17, 6:18, 11:15, 14:24, 36:15 sort [10] - 12:25, 15:22, 16:4, 19:13, 24:6, 29:6, 29:12, 29:20, 29:22, 30:2 sought [1] - 30:20 sound [1] - 38:8 sources [3] - 34:2, 35:15, 35:16 South [2] - 2:3, 2:12 speaking [3] - 4:9, 4:21, 42:1 |
| R | | S | | |
| RAFFERTY [1] - 1:20 raise [1] - 9:19 raised [9] - 22:3, 22:11, 27:21, 28:6, 28:9, 28:12, 33:18, 39:13, 40:11 raising [1] - 31:15 rather [1] - 7:7 RE [1] - 1:5 reach [1] - 9:23 reached [3] - 5:14, 5:19, 8:14 reaching [1] - 5:22 read [1] - 16:3 ready [1] - 4:4 realized [3] - 23:13, 29:17, 29:24 really [9] - 7:24, 8:16, 20:2, 23:5, 24:2, 24:9, 36:21, 43:16, 44:9 reason [3] - 8:15, 13:15, 13:21 reasonable [1] - 34:15 reasonably [1] - 12:23 receive [2] - 8:10, 46:6 received [13] - 10:17, 22:13, 22:17, 22:23, 23:13, 23:16, 27:4, 28:25, 29:1, 29:3, 29:5, 35:16, 37:24 recent [1] - 10:13 recently [3] - 24:3, 26:4, 26:18 recess [1] - 36:14 recipient [1] - 27:12 recipients [1] - 27:6 recommendation [1] - 12:5 record [10] - 14:24, 19:9, 38:9, 38:24, 39:9, 44:7, 44:19, 45:11, 47:2 recorded [1] - 1:25 records [3] - 26:9, 42:14, 43:22 redline [2] - 16:25, 29:12 redlines [3] - 14:11, 14:21, 15:16 Redondo [1] - 2:3 reduce [1] - 7:21 referring [1] - 34:17 regard [1] - 42:12 regarding [2] - 11:18, | | sanction [3] - 33:2, 42:24, 45:4 | | |

| | | | | |
|---|---|--|--|---|
| <p>SPECIAL ^[1] - 1:11 Special ^[1] - 4:2 specific ^[3] - 19:3, 25:11, 43:21 specifically ^[5] - 20:3, 22:7, 34:6, 40:11, 42:2 spite ^[1] - 38:20 spoken ^[1] - 13:16 spots ^[1] - 35:14 staggering ^[1] - 13:16 stamped ^[1] - 30:3 stand ^[5] - 10:4, 12:17, 14:5, 20:17, 21:22 standard ^[2] - 4:7, 43:17 standpoint ^[1] - 19:23 stands ^[1] - 21:5 stanoch ^[1] - 12:11 Stanoch ^[8] - 13:7, 15:2, 15:13, 16:12, 17:12, 19:14, 20:23, 20:25 start ^[2] - 4:12, 16:1 started ^[1] - 5:13 starting ^[2] - 37:20, 40:12 state ^[2] - 16:8, 30:11 statement ^[1] - 44:7 statements ^[3] - 12:22, 20:1, 20:8 STATES ^[1] - 1:2 STATUS ^[1] - 1:6 stay ^[1] - 13:12 stenography ^[1] - 1:25 steps ^[2] - 10:16, 29:12 still ^[14] - 6:16, 13:14, 19:24, 22:16, 22:17, 23:10, 23:22, 24:15, 29:18, 29:25, 30:4, 30:7, 36:3, 41:22 stop ^[1] - 8:25 storage ^[2] - 25:12, 26:8 stored ^[2] - 25:8, 25:9 streamlined ^[1] - 8:17 street ^[1] - 44:10 Street ^[4] - 1:18, 2:9, 2:12, 3:6 Streets ^[1] - 1:9 strict ^[1] - 43:17 strike ^[2] - 41:15, 44:24 striking ^[1] - 42:4 students ^[1] - 35:2 subject ^[3] - 7:13, 25:9, 43:18</p> | <p>subjects ^[1] - 27:21 submissions ^[1] - 12:2 submit ^[5] - 18:20, 19:4, 20:1, 20:6, 20:12 submitted ^[3] - 14:6, 18:9, 20:9 substance ^[3] - 15:23, 16:5, 16:6 substantial ^[4] - 26:19, 28:8, 30:15, 36:5 substantially ^[4] - 29:8, 38:1, 39:6, 39:11 substantively ^[1] - 15:15 suggest ^[2] - 33:8, 35:10 suggested ^[4] - 7:6, 16:7, 18:4, 45:21 suggestion ^[1] - 9:15 Suite ^[6] - 1:18, 1:21, 2:6, 2:16, 3:6, 3:10 summary ^[3] - 6:10, 13:9, 14:12 support ^[2] - 32:1, 32:5 supported ^[1] - 45:6 supposed ^[2] - 30:2, 37:18 surprise ^[2] - 27:2, 39:20 surprised ^[1] - 46:6 suspended ^[1] - 9:22 sympathize ^[1] - 25:17 systems ^[1] - 22:19</p> | <p>thousand ^[1] - 22:14 thousands ^[3] - 8:19, 9:12, 26:4 three ^[4] - 27:20, 28:7, 31:4, 31:23 tight ^[1] - 32:10 timeframe ^[1] - 14:15 timeline ^[1] - 5:22 timing ^[2] - 10:2, 10:14 today ^[20] - 4:22, 10:11, 13:11, 14:9, 14:19, 15:3, 16:12, 16:17, 21:21, 26:4, 26:19, 28:19, 31:23, 32:1, 37:15, 40:20, 44:9, 44:17, 46:1, 46:10 together ^[2] - 14:8, 41:14 tomorrow ^[2] - 37:18, 45:9 tonight ^[2] - 37:17, 40:22 topic ^[1] - 4:25 topics ^[1] - 20:24 total ^[1] - 7:19 totally ^[1] - 42:25 touch ^[1] - 10:20 towards ^[1] - 5:11 transcript ^[2] - 1:25, 47:1 transcription ^[1] - 1:25 transmitted ^[1] - 27:13 TRAURIG ^[1] - 2:15 treaters ^[1] - 5:10 treating ^[1] - 4:17 triage ^[1] - 15:4 triaging ^[1] - 18:8 tried ^[3] - 7:24, 12:25 Trischler's ^[1] - 4:12 true ^[2] - 39:16, 43:4 try ^[3] - 6:4, 8:4, 42:21 trying ^[9] - 14:6, 15:17, 29:18, 29:23, 30:4, 33:6, 35:10, 40:1, 43:5 turned ^[1] - 9:12 two ^[19] - 4:14, 7:9, 8:1, 13:17, 14:19, 15:20, 15:22, 18:11, 21:20, 28:15, 28:17, 30:12, 31:15, 36:4, 38:14, 38:17, 40:3, 40:23, 44:9 two-way ^[1] - 44:9 type ^[5] - 22:22, 23:3, 33:4, 33:5, 39:18 types ^[2] - 35:17, 37:2</p> | <p>typically ^[2] - 33:22, 33:23</p> <p>U</p> <p>U.S. ^[3] - 1:8, 2:14, 38:14 ULMER ^[1] - 3:5 undercut ^[1] - 35:5 understandable ^[1] - 44:14 understandably ^[1] - 38:5 understood ^[5] - 6:20, 9:24, 15:2, 30:25, 32:24 underway ^[1] - 5:2 undue ^[1] - 9:10 unexpectedly ^[1] - 35:6 unfortunately ^[2] - 38:11, 41:9 UNITED ^[1] - 1:2 units ^[1] - 22:21 unless ^[1] - 29:14 Unless ^[1] - 18:14 unmute ^[1] - 4:9 up ^[16] - 7:9, 7:20, 12:10, 13:8, 15:25, 17:22, 19:22, 23:8, 25:9, 31:12, 33:24, 35:6, 35:12, 39:1, 39:14, 40:20 upcoming ^[1] - 42:2 update ^[2] - 20:12, 21:5 USA ^[2] - 2:18, 2:22</p> <p>V</p> <p>VALSARTAN ^[1] - 1:5 Vanaskie ^[1] - 4:2 VANASKIE ^[66] - 1:12, 4:3, 4:7, 4:23, 5:17, 6:8, 6:12, 6:20, 7:5, 8:7, 9:17, 9:21, 10:1, 10:22, 11:1, 11:3, 11:11, 11:14, 13:3, 14:3, 14:15, 14:19, 14:21, 15:25, 17:8, 17:15, 18:7, 18:17, 18:22, 19:3, 19:6, 19:10, 20:8, 20:14, 21:4, 21:7, 21:10, 21:13, 21:16, 22:1, 24:16, 24:20, 28:2, 28:14, 30:9, 32:6, 33:16, 33:25, 34:5, 34:8, 34:11, 34:18, 34:25, 36:15, 36:19, 36:24, 37:6, 37:10,</p> | <p>41:20, 43:9, 44:11, 45:22, 45:25, 46:3, 46:5, 46:14 vendor ^[2] - 40:15, 42:15 version ^[5] - 29:2, 29:24, 30:1, 30:3 versions ^[6] - 24:5, 24:6, 28:24, 29:5, 29:12, 29:19 versus ^[1] - 14:11 VIA ^[1] - 1:7 via ^[2] - 4:1, 42:1 VIDEOCONFERENC E ^[1] - 1:7 videoconference ^[1] - 4:1 Vine ^[1] - 3:6 virtually ^[1] - 8:12 volume ^[1] - 44:13</p> <p>W</p> <p>wake ^[1] - 33:23 WALLACK ^[1] - 3:2 wants ^[2] - 26:16, 33:12 warrant ^[1] - 44:18 warranty ^[2] - 12:22, 12:23 waterfront ^[1] - 26:15 ways ^[2] - 30:15, 43:16 Wednesday ^[2] - 34:9, 34:14 week ^[6] - 6:22, 6:23, 10:21, 13:8, 26:3, 38:9 weekend ^[1] - 42:11 weekly ^[1] - 6:6 weeks ^[9] - 13:25, 14:19, 16:13, 18:12, 22:13, 23:8, 30:12, 30:16, 36:4 weigh ^[2] - 15:11, 16:16 WERNER ^[1] - 2:19 whatsoever ^[1] - 33:4 whereby ^[1] - 25:6 WHITELEY ^[13] - 2:8, 2:8, 13:5, 14:7, 14:17, 14:20, 16:19, 18:13, 18:15, 19:1, 19:4, 20:19, 21:15 Whiteley ^[6] - 13:5, 14:3, 17:11, 18:2, 20:18, 21:13 Wholesaler ^[1] - 3:7 wholesaler ^[3] - 11:6, 20:9, 21:8 wholesalers ^[4] -</p> |
|---|---|--|--|---|

13:14, 19:12, 19:13,
21:11
wholesalers' ^[1] -
19:23
wild ^[1] - 33:20
Williamson ^[1] - 5:6
willing ^[5] - 8:4, 13:24,
28:16, 42:25, 43:1
willy ^[1] - 8:18
willy-nilly ^[1] - 8:18
withheld ^[5] - 8:23,
9:1, 9:12, 9:22
withhold ^[1] - 43:4
witness ^[6] - 7:8, 7:12,
7:21, 27:9, 37:19,
37:20
witnesses ^[8] - 23:12,
23:14, 23:23, 26:25,
31:18, 32:4, 38:14
wonderful ^[1] - 46:10
wondering ^[2] - 30:16,
30:24
words ^[2] - 25:8,
27:12
works ^[1] - 24:12
worth ^[1] - 22:14
wound ^[1] - 25:9
write ^[1] - 40:24
writing ^[5] - 25:10,
27:5, 27:7, 31:9,
31:13
written ^[2] - 33:17,
36:1

Y

year ^[4] - 38:5, 38:16,
38:17, 38:25
years ^[1] - 36:22
yesterday ^[6] - 10:13,
12:3, 19:15, 19:20,
28:19, 29:18

Z

Zhejiang ^[1] - 2:14
ZHP ^[1] - 23:3
Zoom ^[1] - 4:1
ZOOM ^[1] - 1:7